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THE

CODE OF CRIMINAL PROCEDURE,

(ACT XXV. OF 1861,)

AND OTHER LAWS AND RULES OF PRACTICE

RELATING TO

PROCEDURE IN THE CRIMINAL COURTS OF BRITISH INDIA.

WITH NOTES,

CONTAINING THE

OPINIONS DELIVERED BY ALL THE SUPERIOR LOCAL COURTS,

BY

H. T. PRINSEP,

BENGAL CIVIL SERVICE, AND REGISTRAR, HIGH COURT, CALCUTTA.

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PREFACE.

THE object of this work is to present, in a convenient form, all the laws and rules of practice relating to Procedure in the Criminal Courts of British India, which have emanated from the Legislature, the Highest Courts of Justice, or the Executive Government. The Code of Criminal Procedure (Act XXV. of 1861) naturally forms the bulk of this volume, but in an Appendix are given several Statutes and Acts of the Legislative Council in India, which are intimately connected with the subject, and are necessary for constant reference.

It only remains to state briefly, that the sources from which the information contained in the notes has been obtained are published reports and official records, which have been kindly placed at my disposal.

Where it has been possible to do so, reference has been made to reports published under authority or recognized by the Courts. Under this category have been classed—the Reports of the Madras High Court, by Mr. Whitley Stokes and Mr. O'Sullivan—of the Bombay High Court, by Mr. Dunbar and others—and of the Agra Sudder Court, published under the authority of that Court.

In Calcutta, no reports of Criminal cases have been published under authority, nor, until very recently and while this volume was in the press, were Sutherland's Reports accepted by the High Court. Instead therefore of referring to cases in these reports, it has been thought preferable to refer either to the name of the appellant and the date of the order quoted, or, in matters in which the Court has acted as a Court of Revision, to the number of the order and the year in which it was passed. Thus 60, 1865,

would indicate 60 as the number of the order quoted, and 1865 as the year in which it was passed.

In the Punjab, in Oude, and in the Central Provinces, there have been no Reports. The orders quoted, have been obtained from official records, from which source several rulings of the Madras and Bombay Courts, hitherto not published, have also been obtained.

The marginal references are intended to remind the Reader of the special meaning to be put on particular terms. They are perhaps not so necessary in the Code of Criminal Procedure as in the Indian Penal Code, in which the special terms made use of are more numerous; but my own experience and observation has shown me that misinterpretations of the law would frequently have been avoided, had more attention been paid to the definitions contained in these laws, and it has therefore been considered advisable to introduce these and other references of a somewhat similar nature.

H. T. P.

March 1*st*, 1866.

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ACT No. XXV OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(*Received the assent of the Governor General on the 5th of September*, 1861.)

An Act for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.

Preamble.

WHEREAS it is expedient to simplify the Procedure of the Courts of Criminal Judicature not established by Royal Charter; It is enacted as follows :—

Short title.

1. This Act shall be called the Code of Criminal Procedure.

CHAPTER I. ss. 2—20.

OF DEFINITIONS.

Interpretation.

2. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction.

"British India."

3.* The words "British India" shall denote the territories that are or shall become vested in Her Majesty by the Statute 21 and 22 Vic. c. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

* See in S 15, Penal Code.

"Special law."

4.† The words "special law" shall denote a law applicable to a particular subject.

† See in S 41, Penal Code.

"Local law."

5.‡ The words "local law" shall denote a law applicable only to a particular part of British India.§

‡ See in S 42 Penal Code.

§ 6, 3 ante.

CH. I. SS 6—13.

"Moveable property."

6.* The words "moveable property" shall include corporeal property of every description, except land and things attached to the earth or permanently fastened to any thing which is attached to the earth.

* See in S. 22, Penal Code.

"Number."

7. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

"Gender."

8. Words importing the masculine gender shall include the feminine.

"Enquired into." "Determined."

9. The words "enquired into" shall be deemed to comprise every proceeding preliminary to trial; and the word "determined" to comprise trial, and every subsequent proceeding, including the punishment of the offender.

Thus previous to a commitment being made, an offence would be "enquired into." It would be "determined" by the Court of Session.

"Written."

10. The word "written" shall include "printed," "lithographed," and "engraved."

"Criminal Court."

11. The words "Criminal Court" shall denote every Judge or Magistrate lawfully exercising jurisdiction in criminal cases, whether for the decision of such cases in the first instance or on appeal, or for commitment to any other Court or Officer.

† See in S. 20, Penal Code.

"Court of Justice."

12.† The words "Court of Justice" shall denote a Judge who is empowered by law to act judicially alone, or a body of Judges empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

The Criminal Procedure gives the same definition of a Court of Justice as the Indian Penal Code, but the latter renders it more complete by adding the definition of the term "Judge." Unless that definition be followed, instead of the more ordinary signification of the word Judge, great inconvenience may arise. See Section 33 and note.

"Court of Session."

13. The words "Court of Session" shall, subject to the limitations in Section 22, include the Courts of the Assistant Sessions Judges in the Presidency of Bombay.

"Magistrate of the District."

14. The words "Magistrate of the District" shall mean the Chief Officer charged with the executive administration of a District* in criminal matters, by whatever designation such Officer is called.

* S. 18.

In some Provinces (*e. g.* The Punjab, Oude, &c.) the Magistrates of Districts are termed Deputy Commissioners: it is to provide for such officers that this section has been enacted.

"Magistrate."

15. The word "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate.

By Section 22, Magistrates are of three grades. The term "Magistrate" would refer to any of these Magistrates.

"The powers of a Magistrate."

16. The words "the powers of a Magistrate" shall imply the full powers of a Magistrate.

See S. 22 for definition of the full powers of a Magistrate.

"Any of the powers of a Magistrate."

17. The words "any of the powers of a Magistrate," shall denote powers less than the full powers of a Magistrate.

The powers less than the full powers of a Magistrate are exercised by officers called Subordinate Magistrates. These are described in S. 22.

"District."

18. The local jurisdiction of the Magistrate† of a District shall, for the purposes of this Act, be deemed a "District;" and the local jurisdiction in a particular part of a District vested in a Magistrate other than the Magistrate of the District, shall be deemed a "division of a District."

† S. 14.

"Division of a District."

The Agra Sudder Court (Cir. 20, 1863) ruled that certain Pergunnahs, in charge of which the Magistrate of a District had placed a Subordinate Magistrate, could not be considered as a Division of a District, an order of Government being necessary before such an officer can act as a Magistrate in charge of a Division of a District.

"Sudder Court."

19. In any part of British India‡ to which this Act shall be extended, under the provisions of Section 445, the words "Sudder Court" shall denote the highest Criminal Court of Appeal or revision in such part established.

‡ S. 3.

Thus, in the Lower Provinces of Bengal, in Madras, and in Bombay, the High Courts are referred to in this Code by the term "Sudder Court;" and in the Punjab, Oude, in the Central Provinces, and Mysore, the Judicial Commissioner occupies the position of the Sudder Court.

CH I II. ss 20—22.

"Year." "Month."

20. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

CHAPTER II.—ss. 21—42.

OF THE JURISDICTION OF THE CRIMINAL COURTS.

* S. 11.

Offences cognizable by Criminal Courts.

21. The Criminal Courts* of the several grades, according to the powers vested in them respectively by this Act, shall have jurisdiction in respect of offences punishable under the Indian Penal Code (Act XLV of 1860) or under any special† or local‡ law (except offences which are by any such law made punishable by some other authority therein specially mentioned), and in the investigation and trial of the offences hereby declared to be within their jurisdiction, shall be guided by the provisions of this Act.

† S. 4.
‡ S. 5.

According to the terms of this Section, it would seem that the Code of Criminal Procedure would not apply to every case investigated or tried by a Justice of the Peace not a Magistrate, for such officers are not "Criminal Courts" as defined by Section 11. Such cases would, however, rarely, if ever, occur.

By what Courts the offences mentioned in the Schedule are triable, and within what limits such Courts may pass sentence.

22. The offences mentioned in the Schedule annexed to this Act shall, subject to the provision contained in the third explanatory note prefixed to the said Schedule, be triable by the Courts specified in Column 7 of the said Schedule, and such Courts shall be competent to pass sentence in respect of such offences within the following limits, (that is to say,)

The third explanatory note to the Schedule declares, that a superior Court has jurisdiction over an offence stated to be triable by a Lower Court; but as regards the power of Sessions Judges in this respect, the provisions of Section 359 should be borne in mind.

CH II. S. 22.

Powers of Court of Session.

The Court of Session.* Death (subject to confirmation by the Sudder† Court). Transportation,‡ imprisonment of either description for a period not exceeding fourteen years, including such solitary confinement§ as is authorized by law, or fine to an unlimited amount,‖ or both transportation and fine, or imprisonment and fine, in cases in which both punishments are authorized by the Indian Penal Code. In cases in which, according to the Indian Penal Code, forfeiture¶ of property may be adjudged, the Court of Session* may adjudge such forfeiture in addition to the sentence.

* S 13
† S 19
‡ Ss 58, 59, Penal Code
§ Ss 73, 74, Penal Code
‖ S 63, Penal Code.
¶ Ss 61, 62, Penal Code.
* S. 13.

Assistant Sessions Judges in Bombay.

In the Presidency of Bombay, it shall be lawful for a Sessions Judge to delegate cases for trial by an Assistant Sessions Judge : and such Assistant Sessions Judge shall be competent in such cases to pass sentences within the following limits :—Imprisonment of either description for a term not exceeding seven years (including such solitary confinement as is authorized by law), or fine, or both. If the sentence be one of imprisonment for a term exceeding three years, it shall be passed subject to confirmation by the Sessions Judge. The Sessions Judge may review and hear appeals against the proceedings of his Assistants, and may confirm and amend (but not so as to enhance), or may reverse their sentences or orders. It shall not be competent to an Assistant Sessions Judge to review or hear an appeal against the proceedings of a Magistrate.†

† S 15.

Powers of the Magistrate of the District.

The Magistrate of the District‡ or other Officer authorized to exercise the powers§ of a Magistrate. Imprisonment of either description‖ not exceeding the term of two years, including such solitary confinement¶ as is authorized by law, or fine to the extent of one thousand Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

‡ S 14, 19
§ S 16.
‖ i e, rigorous or simple S 53. cl 4 Penal Code.
¶ Ss. 73, 74, Penal Code.

Subordinate Magistrates or Officers authorized to exercise any of the powers* of a Magistrate—

* S. 17.

Powers of Subordinate Magistrates, 1st Class.

1st Class. Imprisonment of either description† not exceeding six months, or fine not exceeding two hundred Rupees,

† i e rigorous or simple S. 53, cl 4, Penal Code.

CH. II. S 22.

or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

* i. e. rigorous or simple. S 53, cl. 4, Penal Code.

2nd Class. Imprisonment of either description* not exceeding one month, or fine not exceeding fifty Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

2nd Class.

No sentence of solitary confinement, under Section 73 of the Indian Penal Code, shall be passed by any Court inferior to an Officer exercising the powers† of a Magistrate.

† i. e. Full Powers, S. 16

By S. 8, Act VI of 1864 (Whipping Act) the above mentioned officers, except Subordinate Magistrates of the 2nd Class, unless expressly empowered by Government, may pass sentences of whipping for certain offences specified in the Act. See Appendix A.

Section 359 enacts, that except in cases referred to in Section 172 of this Act, a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence, but on a charge preferred by a Magistrate or other officer specially empowered under this Act or under any other law to make commitment to such Court.

The cases referred to in Section 172, relate to offences committed before a Court of Session, and under its own cognizance, being exclusively triable by it.

The powers thus given to the several grades of officers, presiding in Criminal Courts, are, under certain circumstances, enhanced by Section 46, which enacts that when a person shall be convicted at one time of two or more offences punishable under the same or different Sections of the Penal Code, it shall be lawful for the Court to sentence such person for the offences of which he shall have been convicted to the several penalties prescribed by the said Code, which such Court is competent to inflict; such penalties to commence the one after the expiration of the other. It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which such Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided, that in no case shall the person be sentenced to imprisonment for a longer period than fourteen years; and provided also, that if the case be tried by a Magistrate, the punishment shall not, in the aggregate, exceed twice the extent of punishment which such Magistrate is, by his ordinary jurisdiction, competent to inflict.

Police officers vested with the powers of a Magistrate, are to exercise them only in the restricted manner set forth in Section 6, Act V of 1861. They have no power to punish under the Indian Penal Code.—Jud. Com. Punjab, 31st Jan., 1862.

The powers of Magistrates with regard to awarding sentences of imprisonment in default of payment of fine, are subject to the following rules.

The Penal Code draws a distinction between offences for which fine as well as imprisonment may be awarded, and offences for which fine is the only punishment. For the former class of offences, the term of

imprisonment in default of payment of fine, must "not exceed one-fourth of the term of imprisonment, which is the maximum fixed for the offence" (Section 65, Penal Code); and as regards the powers of Magistrates in awarding imprisonment in default of payment of fine for such offences, Section 45, Criminal Procedure, declares that it "shall in no case exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence other than as imprisonment in default of payment of fine."

For cases regarding offences punishable with fine only, Section 67, Penal Code, regulates the term of the alternative sentence of imprisonment in default of payment of fine, by declaring that it shall not exceed two months when the amount of fine shall not exceed fifty Rupees, four months when the amount shall not exceed one hundred Rupees, and six months in any other case.

By Act XV. of 1862, Section 1, the Governor-General in Council, or the Local Government in any territory to which the Code of Criminal Procedure has been extended, and which is not subject to the General Regulations of Bengal, Madras, and Bombay, have authority to vest the Chief Officer charged with the executive administration in a District in criminal matters, with power to try all offences not punishable with death, and to pass sentence of imprisonment of either description for a term not exceeding seven years, including such solitary confinement as is authorised by law, or fine, or both.

Local Government may invest any person with powers of Magistrate or Subordinate Magistrate.

23. The Local Government may invest any person with the powers* of a Magistrate or of a Subordinate Magistrate of the first or second class, or described in the last preceding Section, with a view to the exercise, by such person, of such powers under this Act or under any special† or local‡ law.

* *i.e.* Full Powers, S. 16.

† S. 4.

‡ S. 5.

Criminal Courts to have jurisdiction over all persons, except persons expressly exempted.

24. The Criminal Courts§ shall have jurisdiction over all persons, except such persons as, by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay, respectively, or by this Act or any other Act of the Governor-General of India in Council, are, or shall be exempted from their jurisdiction.

§ S. 11.

No person exempted from Criminal Procedure by reason of place of birth or of descent.

25. No person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal Procedure contained in this Act. Provided that nothing in this Section shall be held to authorize the trial or commitment for trial before any Criminal Court‖ of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court.

Proviso.

‖ S. 11.

CH. II. SS. 26 & 27.

Offence to be ordinarily tried in the jurisdiction where it is committed.

26. Except where otherwise expressly provided by this Act, every offence shall be enquired* into and determined* in the District† or division of a District† in which the offence was committed. Provided that nothing in this Section shall exempt European British subjects from being tried and convicted before the Supreme‡ Courts of Judicature for offences committed beyond the local limits of such Courts.

* S. 9.

† S. 18.

Proviso.

‡ Now High Courts in their Extraordinary Original Criminal Jurisdiction.

European British subjects can, under Section 39, be committed, or held to bail for trial, only by a Justice of the Peace. They can, however, for certain offences be summarily convicted by a Magistrate who is a Justice of the Peace. Sec. 53 Geo. III., c. 155, Section 105, and Act VII. of 1855 (Appendix B), and Sections 163 and 165 of this Code. The law under which they are to be tried, is declared by the Letters Patent constituting the High Courts of Calcutta, Madras and Bombay, to be Act XLV. of 1860, called the "Indian Penal Code," subject "to such alterations, modifications, and additions in and to such Code as may have been or may be prescribed by any Acts or Regulations made by the Governor-General in Council."

As regards the Procedure relating to European British subjects, it will be well to read Section 38, of the same Letters Patent with Section 25 of the Code of Criminal Procedure: "And we do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Fort William in Bengal, in the exercise of its Ordinary Original Criminal Jurisdiction, and also in all other criminal cases over which the said Supreme Court now has jurisdiction, shall be regulated by the procedure and practice now in use in the said Supreme Court, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act XXV. of 1861, or by such further or other enactments of the Governor-General in Council, in relation to Criminal Procedure, as are now in force: Provided always, that the regulation of such proceedings, respectively, shall be subject to such laws and regulations as shall be hereafter made by the Governor-General in Council, in relation to such proceedings respectively."

Looking to the terms of Section 25, and the Letters Patent, it would seem that all European British subjects would be subject to the provisions of the Code of Criminal Procedure in all matters *not being trials.*

May be tried in the jurisdiction where the act is done, or where the consequence ensues.

27. When a person shall be accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be enquired into§ or determined§ in any District‖ or division of a District‖ in which any such thing shall have been done, or any such consequence shall have ensued.

§ S. 9.

‖ S. 18.

A Magistrate should act under Section 27 and the following Sections, solely with reference to the convenience of the public: ordinarily the proper district for the enquiry and trial of offences falling under those Sections would be that where the witnesses could, with the least inconvenience, attend. In such cases, therefore, the Magistrate to whom the complainant or prosecutor may apply, should commence the investigation, and proceed with the enquiry and trial, unless he find, in the course of enquiry, that the case can be more conveniently tried in another district. In the event of the latter contingency, he should suspend further proceedings, and place himself in communication with the Magistrate of such other district, recommending that the case be removed to that district. If the Magistrate of this district should concur, but not otherwise, the proceedings and the accused should be forwarded to such other Magistrate, and the prosecutor directed to attend and prosecute his complaint If the other Magistrate differ from him in his opinion as to the district in which the investigation and trial can be most conveniently held, the first Magistrate should either proceed with the enquiry and trial, and refer the question of venue for the determination of the Sudder Court. Agra Sudder Court, Circular 21, 1864.

Abetment.

28. The abetment* of an offence, wherever such abetment* shall have taken place, may be enquired into† or determined† in any District‡ or division of a District‡ in which the offence abetted may be enquired into† or determined† by any Court which has jurisdiction to try such offence, as if the abetment* had been committed at the same place at which the offence abetted was wholly or partly committed; or the abetment may be enquired into† or determined† in any District‡ or division of a District‡ within which the abettor§ has done any thing for abetting the commission of such offence.

* S. 107, Penal Code.
† S. 9
‡ S. 18.
§ S. 108, Penal Code

See note to S. 27.

Offence committed on boundary.

29. When any offence shall be committed on the boundary or boundaries of two or more Districts,¶ whether subject to the same local Government or not, or of two or more divisions of a District, or shall be begun in one District¶ or division of a District¶ and completed in another, whether such Districts¶ be subject to the same local Government or not, every such offence may be enquired into* or determined* in any of such Districts¶ or divisions of a District¶, in the same manner as if it had been actually and wholly committed therein.

¶ S. 18.
* S. 9

See note to S. 27.

The term "Government" is not defined by the Code of Criminal Procedure. According to the Indian Penal Code, Section 17, it denotes the person or persons authorized by law to administer executive Government in any part of British India, *i. e.*, in any of the territories which are or shall become vested in Her Majesty's by the Statute 21 and 22 Vic.

CH. II. ss. 30 & 31

c 109, entitled "an Act for the better Government of India." except the Settlement of Prince of Wales' Island, Singapore and Malacca. (Section 15, Penal Code, and Section 3, Criminal Procedure).

Offence committed during journey, &c.

30. When any offence shall be committed on any person, or on, or in respect of, any property, in or upon any coach, cart, or other carriage or conveyance, or upon any beast of burden employed in any journey, or shall be committed on any person, or on, or in respect of, any property on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be enquired into§ or determined§ in any District‖ or division of a District‖, through any part whereof such coach, cart, carriage, conveyance, beast of burden, or vessel, shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if the offence had been actually and wholly committed in such District‖ or division of a District‖; and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river, canal, or navigation, shall constitute the boundary of any two Districts‖ or divisions of a District‖, such offence may be enquired into§ or determined§ in either of such Districts‖ or divisions of a District‖, through or adjoining to, or by the boundary of any part whereof such coach, cart, carriage, conveyance, beast of burden, or vessel, shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually and wholly been committed in such District‖ or division of a District‖.

§ S 9.
‖ S. 18.

See note to S. 27.

Receiving &c., stolen property.

31. If any person be charged with any offence punishable under Sections 411, 412, or 414 of the Indian Penal Code, under the head "Of the receiving of stolen property," such offence may be enquired into* or determined* in any District† or division of a District† in which such person shall have, or shall have had, such stolen property‡ in his possession, or in any District† or division of a District† in which the offence by which such property came to be stolen property within the meaning of the said Code, may be enquired into* or determined.*

* S 9
† S 18.
‡ S. 410, Penal Code.

Being a thug, &c.

32. Whenever any person is charged with being a thug,* or with murder as a thug,* or with dacoity† with‡ or without murder, or with having belonged to a gang of dacoits,§ or with having belonged‖ to any wandering or other gang of thieves associated for the purpose of habitually committing theft or robbery and not being a gang of thugs or dacoits, the offence may be enquired* into in any District† in which the accused person is, by any Magistrate competent‡ to commit to a Court of Session,§ and the accused person may be committed to the Court of Session,§ to which such Magistrate is subordinate.

* S. 310, Penal Code
† Ss 391, 395, Penal Code.
‡ S 396, Penal Code.
§ S. 400, Penal Code
‖ S. 401, Penal Code.
* S 9.
† S 18.
‡ Cf. S. 38.
§ S. 13.

See note to S. 27.

The late Calcutta Sudder Court (496 of 1862) and the High Court [814 of 1865], ruled that, under Section 32, any of the offences therein specified can be enquired into only in the district in which the accused person is, that is to say, happens to be, when charged or arrested.

Escape from lawful custody under sentence.

33. If any person shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice‖ or by virtue of a commutation* of such sentence, or shall be charged with any offence punishable under Section 227 of the Indian Penal Code, or under Section 12 of Act XXIV of 1855 (*relating to Penal Servitude*), the offence may be enquired† into or determined,† either in the District‡ or division of a District‡ in which such person shall be apprehended and retaken, or in the District‡ or division of a District‡ in which he was formerly tried, or in the case of an escape from custody, in the District‡ in which he shall have escaped from custody.

‖ S. 12.
* Ss. 54, 55, Penal Code.
† S. 9.
‡ S. 18.

See note to S. 27.

Unless the definition of a Judge, as contained in Section 19, Penal Code, be applied to the definition of a Court of Justice, Section 12 Criminal Procedure, there might be considerable difficulty in making the terms of Section 33, extend to the enquiry or determination of persons charged with escaping from custody in which they may be lawfully detained in pursuance of a sentence of a *Magistrate*.

An escape from lawful custody on the part of a convict is punishable under Section 224, Penal Code.

Section 227, Penal Code enacts that, "Whoever, having accepted any "conditional remission of punishment, knowingly violates any condition "on which such remission was granted, shall be punished with the punish- "ment to which he was originally sentenced, if he has already suffered no "part of that punishment; and if he has suffered any part of that punish- "ment, then with so much of that punishment as he has not already "suffered."

Regarding the remission of sentences, see S. 54.

CH. II. SS. 34—36.

Act XXIV of 1855, is entitled "An Act to substitute Penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts." Section 9 of that Act, declares that it "shall be lawful for the Governor-General of India in Council to grant to any convict, who may hereafter be sentenced or ordered to be kept in Penal servitude, a license to be at large within the said territories, or in such part thereof as in such license shall be expressed, during such portion of his term of servitude, and upon such conditions in all respects as to the Governor-General of India in Council shall seem fit :-and it shall be lawful for the said Governor-General in Council at any time to revoke or alter such license by a like order."

Under Section 12, "If a license be granted under Section 9 of this Act, upon condition specified therein, and the convict to whom the license is granted, violate any such condition, or shall go beyond the limits specified in the license, or knowing of the revocation of such license, shall neglect forthwith to surrender himself, or shall conceal himself, or endeavour to avoid being apprehended, he shall be liable, upon conviction, to be sentenced to Penal servitude for a term not exceeding the full term of Penal servitude mentioned in the original sentence or order."

Sudder Court to decide when doubt arises as to the jurisdiction where an enquiry shall take place.

§ S 18. || S 9. * S. 19.

34. Whenever any doubt shall arise as to the District§ in which any offence should be enquired into|| or determined,|| it shall be lawful for the Sudder Court* within whose jurisdiction the offender is apprehended, to decide in which District§ the offence shall be determined.||

Sudder Court may transfer any case from one jurisdiction to another.

† S. 19. ‡ S. 11. § S. 9. || S. 18.

35. It shall be competent to the Sudder Court† to order the transfer of any criminal case or appeal from a Criminal Court‡ subordinate to its authority, to any other such Criminal Court‡ of equal or superior jurisdiction, or to order that any offence shall be enquired into§ or determined§ in any District|| or division of a District,|| other than that in which the offence shall have been committed, whenever it shall appear to such Sudder Court† that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses.

Magistrate my withdraw any case from a Subordinate Court, and try it himself, or refer it to any other such Court.

* S. 14. † S. 18. ‡ S. 15

36. It shall be competent to the Magistrate* of the District,† or to a Magistrate‡ in charge of a division of a District,† to withdraw any criminal case from any Court subordinate to such Magistrate within his District† or division,† and to try the case himself, or to refer it for trial to any other such Court competent to try the same.

The jurisdiction of a Magistrate in charge of a Division of a District, exercising the full powers of a Magistrate, is co-ordinate with, rather than

exclusive of, the jurisdiction of the Magistrate of the district. Whatever the Code of Criminal Procedure authorized the Magistrate of the district to do, he may do throughout that district. He is not debarred by the existence of a co-ordinate authority in certain parts of his district from exercising within such parts the powers vested in him. (Madras High Court, 1864.) If, before decision of a case, the Magistrate of the district should withdraw a case under trial before a Magistrate exercising the full powers of a Magistrate, that officer cannot refuse to send it, although he may not be judicially subordinate to the Magistrate of the District. [Calcutta High Court, 504, 1864.]

The legality of an order, passed by a Magistrate of a District, withdrawing from the file of another Magistrate subordinate to him, but exercising full powers and being also a Justice of the Peace, a case against a European British subject, being called into question, the Calcutta High Court (600, 1864) ruled that, as it did not appear that the case was before the Subordinate Magistrate otherwise than as a Magistrate, nothing having been done by that officer as a Justice to the Peace (Section 40), the Magistrate of the District had the power claimed. If the accused had been examined or remanded for further enquiry by the Subordinate Magistrate as Justice of the Peace, the Magistrate's order could not be legally complied with.

Commitment for trial before Supreme Court.

37. It shall be competent to the Magistrate* of the District,† or to any other Officer exercising the powers of a Magistrate,‡ to hold the preliminary enquiry into any cases triable by a Supreme Court of Judicature, and to commit or hold to bail persons to take their trial before such Court, and to exercise all the powers necessary for such purpose.

* S 14. † S 18 ‡ S 16.

The *Supreme Courts of Judicature* are now High Courts in their extraordinary original criminal jurisdiction.

This Section should be read with Section 39, which would seem to restrict the jurisdiction of a Magistrate over European British subjects.

Subordinate Magistrate may be empowered to prepare cases for trial before the Court of Session or Supreme Court.

38. The local Government may empower any Subordinate Magistrate§ of the first or second class, not vested with such power by any law for the time being in force, to hold the preliminary enquiry into cases triable by the Court of Session‖ or by any Supreme Court of Judicature, and may empower such Subordinate Magistrate to commit, or hold to bail, persons to take their trial before such Court of Session‖ or Supreme Court, and to exercise all the powers necessary for such purpose.

§ S 22. ‖ S. 33.

There is no special definition of "Local Government" in this Code. It would probably be the same as the Government of a Presidency. See Sections 17 and 18, Penal Code.

The Supreme Courts of Judicature are now High Courts in their extraordinary original criminal jurisdiction. The power of the Local

CH. II. SS. 39—41.

Government to give jurisdiction to a Magistrate over European British subjects, is restricted by Section 39.

Sub-Magistrates in Madras are empowered by Section 356 to make commitments to the Court of Session.

A charge of an offence triable by a Court of Session, or by the Magistrate of the District (see Schedule) having been preferred to a Subordinate Magistrate, who was not competent to hold the trial, but was vested with power under Section 38 to hold preliminary enquiry into cases triable by the Court of Session, the Calcutta High Court (299, 1865) held that that officer should have referred it for trial to the Magistrate of the District (S. 276), instead of holding a preliminary enquiry, and committing it to the Court of Session; for the latter procedure, which was adopted by him, though strictly legal, should as much as possible be avoided, as it takes up unnecessarily the more valuable time of the Sessions Judge.

Only Justices of the Peace empowered to commit European British subjects for trial.

39. No person who is not a Justice of the Peace shall commit, or hold to bail, any European British subject to take his trial before a Supreme Court of Judicature.

For the law and rules regarding the trial of European British subjects, see Appendix B., pages 297—330.

This Section modifies the provisions of Sections 23, 37 and 38, which should be read with Section 39 as a proviso.

Procedure when a European British subject is charged with an offence triable by Supreme Court.

§ S 15.

40. When a European British subject is charged with an offence triable by a Supreme Court of Judicature, any Magistrate§ may hear the complaint against such person, and may issue a warrant of arrest, or hold to bail such person, with a view to the complaint being investigated by a Justice of the Peace.

Any Magistrate may, on complaint against a European British subject, issue a warrant of arrest, or hold him to bail, with a view to the complaint *being investigated* by a Justice of the Peace, but only a Magistrate who is a Justice of the Peace can hold such person to bail *to take his trial* before the High Court. (See Section 39.)

Procedure when a European is arrested by an Officer not being a Justice of the Peace.

|| S. 15.

41. When a European British subject has been arrested under a warrant issued under the last preceding Section by a Magistrate|| not being a Justice of the Peace, if such Magistrate|| considers that there is a sufficient ground for proceeding, he shall forthwith forward the person arrested to a Justice of the Peace, or if the offence with which such person is charged is bailable, shall, if sufficient bail be tendered, admit him to bail for his appearance before a Justice of the Peace. When the person accused is brought or appears before a Justice of the Peace, under this

Section, such Justice of the Peace shall himself hold the preliminary enquiry into the case, before he commits, or holds to bail, such person for trial before the Supreme Court of Judicature.

Whether an offence is, or is not bailable, will appear on reference to the Schedule, Col. 5.

When a European British subject and a native subject are together charged with an offence requiring the commitment of the former to the High Court for trial, the latter should not be committed to the High Court also, but should, in the ordinary manner, be committed to the Sessions Court competent to try the offence. Calcutta High Court, Circular 1, 1866.

As regards the procedure to be followed in cases in which European British subjects are concerned, see Sections 226 et seq; 9 Geo. iv. C. 74, S. 2, Appendix B. (p. 304,) and Act XIII. of 1865, S. 28, (p. 325).

A European British subject was discharged by a Magistrate and Justice of the Peace, because that officer considered that the act charged had been committed in the exercise of the right of private defence (Section 100, Penal Code). The Calcutta High Court (Morgan, J.) thus expressed its opinion on the proceedings of the Magistrate :—" On the facts as stated by the Magistrate in his written order, the preliminary investigation ought to have been proceeded with. Scarcely any matter that might be disclosed during its further progress, could excuse the Magistrate from sending the case to a higher tribunal, in order that the circumstance under which the accused had inflicted wounds by a gun loaded with ball, might be fully enquired into, and that the superior tribunals should determine whether or not the limits of the right of private defence had been exceeded." Brae, 19th August, 1865.

Saving of jurisdiction given by 53 Geo. III. c. 155, s. 105.

42. Nothing in this Chapter shall interfere with the jurisdiction given by the Statute 53 George III. c. 155, s. 105, or Act VII. of 1853 (*to extend the jurisdiction of Magistrates under the Stat.* 53 *George* III. *c.* 155, *s.* 105, *in cases of assault, forcible entries, and other injuries accompanied by force not being felonies*). Provided that the jurisdiction given by the said Statute and the said Act, shall be exercised only by a Justice of the Peace.

Proviso.

It should be noted that Section 42 restricts the powers given to Magistrates under Statute 53 Geo. III. c. 155, Section 105, and Act VII. of 1853, inasmuch as it declares that such powers shall be exercised only by a Justice of the Peace. See also Section 39, ante.

For Statute 53 George III., c. 155, Section 105, and Act VII. of 1853, see appendix B (pp. 299—302), which also contains many important rules of practice regarding the enquiry into and determination of charges of offences committed by European British subjects.

For the law regarding appeals against convictions and sentences passed under the above laws by a Justice of the Peace, see Section 410.

CHAPTER III. ss. 43—63.

PRELIMINARY RULES.

ss. 43 & 44.

Complainants and witnesses to be examined according to law for time being in force.

43. In all Criminal Courts* complainants and witnesses shall be examined upon oath or affirmation, or otherwise, according to the provisions of the law† for the time being in force in relation to the examination of witnesses.

* S. 11.

† Acts V. of 1840 and II. of 1847.

Act V. of 1840 is to the following effect :—

1. Whereas obstruction to justice and other inconveniences have arisen in consequence of persons of the Hindoo or Mahomedan persuasion being compelled to swear by the water of the Ganges, or upon the Koran, or upon other forms which are repugnant to their consciences or feelings:

It is hereby enacted, that except as hereinafter provided, instead of an oath or declaration now authorised or required by law, every individual of the classes aforesaid within the territories of the East India Company shall make affirmation to the following effect :—

"I solemnly affirm in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

(Sections 2 and 3 have been repealed by Act XVII. of 1862.)

4. And it is hereby provided that this Act shall not extend to any declaration made under authority of Act XXI. of 1837, nor to any declaration or affirmation made in any of Her Majesty's Courts of Justice.

By Act II. of 1847 it is enacted, that "the words 'Her Majesty's Courts of Justice' in Act V. of 1840, Section 4, shall be deemed not to have meant nor extended to, and not to mean nor extend to, the Courts of the Justices of the Peace."

Court may apply portion of fine in compensation for loss or damage caused, &c.

44. In cases in which by the sentence or order of any Criminal Court‡ a fine is imposed upon a conviction for any offence made punishable by fine, whether the offence be punishable or punished by fine only or otherwise, it shall be lawful for such Court to order that the fine or any part thereof, not exceeding the loss appearing to be caused to the person who has suffered by such offence, and any special damage of a pecuniary nature that may have resulted to such person by such offence, and any expenses incurred by the complainant in the prosecution, as the Court may consider reasonable and proper, be paid to or for the benefit of such person according to the discretion of the Court, and in every such case the fine when levied or paid shall be paid and distributed accordingly. If the fine be awarded by a Court whose decision is subject to revision, the

‡ S. 11.

amount awarded to the person injured shall not be paid to such person, until a period of two months shall have elapsed from the date of the award.

The Calcutta High Court [Circular 16th June 1862], has ruled that "there is nothing in the law to prevent the immediate issue of a warrant of execution in realisation of the amount of a fine imposed as a sentence on a convict, but payment to a complainant as compensation must be deferred until expiry of the term of appeal" The same Court [691, 1865] has held that "merely 'bodily injury' is not a proper ground for awarding pecuniary compensation." Also [927, 1865], that "a Criminal Court, before awarding compensation, *first*, should distinctly find that the complainant has suffered loss or damage or has incurred expense in his prosecution, and *then*, should assess the amount thereof." Further, that "the grounds upon which compensation has been awarded, should be distinctly stated." [Bishonath Mundul, 10th April, 1865]; and [777, 1865] that "the specific sums to be paid to each individual, if there are more complainants than one, should be recorded."

The Agra Sudder Court has in several cases similarly restricted the award of compensation.

In a case of murder [2, Agra, 366,] the Court held, that "the property of a person sentenced to death cannot be made use of for the benefit of the family of the murdered man, as the terms of Section 44, all point to the compensation of the living, and not to an allowance to be paid to the heirs of a deceased person." In a case of rape, the same Court held that "pecuniary compensation cannot be awarded to the injured girl." [Nunhay Goojur, 27th April, 1864].

In the Punjab, however, a contrary practice obtains, the Judicial Commissioner having held that "compensation may be awarded to persons who have suffered bodily injury; but the fine must be paid, 1*stly*, only for the benefit of the person who may have suffered loss by such offence, and not to his relations and friends; and 2*ndly*, when the loss or damage is of a material nature. It is not essential that the loss or damage shall be loss or damage of property. It may be any special damage of a pecuniary nature that may have resulted to such person from such offence; or in other words, it may be any material loss or damage which may be estimated in money. Thus, in the case of a labouring man dependent on the use of his limbs for his livelihood, the fracture of a limb or mutilation may justly be held to have caused such loss or damage; and it appears to be consistent with Section 44, to award to persons who have suffered hurt of the above description, compensation for loss of earnings or for medical expenses incurred in consequence thereof. In all cases the nature and extent of the loss or damage sustained, should be distinctly specified."

On appeal, a Sessions Judge has full power to award to a complainant any portion of a fine that may have been paid by the convict, appellant, although the Magistrate, passing that sentence of fine, may have distinctly refused to award compensation. Calcutta High Court 769, 1864.

"*Subject to revision.*" From Chapter XXIX. it would appear that the decisions of all Courts subordinate to the Sudder Court [Section 19] are subject to revision; and, strictly speaking, even in cases in which under Section 411 there may be no appeal, payment of compensation, it would seem, should not be made to any complainant until the lapse of two months from the date of the order.

CH. III. ss. 45 & 46.

Imprisonment in default of payment of fine.

45. In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts* shall be guided by the provisions of Sections 64 and 65 of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine. Provided that in every such case decided by a Magistrate,† the period of imprisonment awarded in default of payment of the fine shall, in no case, exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

* S. 11.

Proviso.

† S. 15.

By Section 64, Indian Penal Code, it is enacted that in default of payment of fine, it shall be competent to the Court to direct that an offender shall suffer imprisonment for a term, which shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence: and Section 65 enacts that, if the offence be punishable with imprisonment as well as fine, such imprisonment, "in default of payment of fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence."

Thus, in a case of theft [Section 379, Penal Code], the powers of a Magistrate exercising full powers would be imprisonment for two years or fine of 1000 Rupees, or in default of payment, imprisonment for six months, *i. e.*, one-fourth of 2 years, the maximum punishment that he could inflict. The powers of a Sub-Magistrate can be easily regulated on this principle. See note to S. 22.

A sentence of fine cannot fix a term within which the fine shall be paid, such being contrary to Section 68 and the subsequent Sections of the Penal Code. Calcutta High Court, 59 and 326, 1862.

Sentence in cases of conviction of two or more offences.

46. When a person shall be convicted at one time of two or more offences punishable under the same or different Sections of the Indian Penal Code, it shall be lawful for the Court to sentence such person for the offences of which he shall have been convicted to the several penalties prescribed by the said Code which such Court is competent to inflict; such penalties, when consisting of imprisonment, to commence the one after the expiration of the other. It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which such Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. Provided that in no case

Proviso.

shall the person be sentenced to imprisonment for a longer period than fourteen years; and provided also, that if the case be tried by a Magistrate,* the punishment shall not in the aggregate exceed twice the extent of punishment which such Magistrate is by his ordinary jurisdiction competent to inflict.† CH III. S. 47. * S 15. † S. 22.

That is to say, a Sudder Court [Section 19], or Court of Session [Section 13], can pass sentences of imprisonment which in the aggregate do not exceed 14 years: but the full powers of a Magistrate are limited to 4 years; of a Sub-Magistrate, 1st Class, to 12 months; and of a Sub-Magistrate, 2nd Class, to two months.

The Calcutta High Court ruled [736, 1864] that when there are in an indictment two separate offences, supported by distinct and separate evidence, a separate sentence should be passed for each offence; the punishment under the second sentence to take effect on the expiry of the first. If, however, there are two or more offences supported by the same evidence, or very nearly so, a verdict of guilty should be entered on the offence covered by the greater portion of the evidence as the gravest in the eye of the law, and a verdict, of not guilty, on the other counts. The High Court can on appeal, if it thinks fit, find the prisoner guilty on any count of which he may have been charged and so acquitted, and reduce the punishment proportionately. And again [892, 1864], that if, after convicting a prisoner of several offences, a Sessions Judge thinks that a sentence of transportation for life should be passed as an aggregate punishment, but that, though a *legal* sentence for any *one* offence, it is too *severe* for any *single* offence committed by the prisoner, he may nevertheless pass such sentence for such offence, recording in the other cases that no sentence has been passed in consequence of the previous sentence. In addition to sentences of imprisonment not exceeding fourteen years, sentence of whipping, if legal, may be awarded.—*Id.* 378, 1865

As an illustration of the first of the above rulings, it may be well to mention that the Calcutta High Court has ruled, that a person convicted under Section 457, Penal Code, of house breaking by night, with intent to commit theft, and also under Section 380 of theft in the same house, should not receive separate sentences.

The Madras Sudder Court adopted a similar view of the law.

The Agra Court has held that, if acting under Section 46, a Magistrate, vested with the full powers of a Magistrate, should pass two sentences, each of one month's imprisonment, these sentences, though separately not appealable [Section 411], would become so. Under this ruling, the sentences would be regarded as cumulative, which the Calcutta High Court has more than once declared, that they are not. The practice is thus conflicting.

The Judicial Commissioner, Punjab, has held that a Subordinate Judge acting under Act XV of 1862 can pass separate sentences under Section 46, Criminal Procedure, not exceeding in the aggregate fourteen years' imprisonment.

Currency of sentence of escaped convicts.

47. When sentence shall be passed on an escaped convict for such escape or for any other offence, the Court may direct such sentence to take effect immediately, or after such

escaped convict shall have suffered imprisonment or transportation, as the case may be, for a further period equal to that which remained unexpired of his former sentence at the time of his escape.

Section 224, Penal Code, provides the punishment for an escape or an attempt to escape made by a convict. Jurisdiction for the trial of such an offence is provided for in Section 33.

The Calcutta High Court has held [480, 1864], that Section 47 does not apply to the escape of a person from the custody in which he may have been detained when under trial. Such an escape is punishable under Section 224, Penal Code.

Judgment on offender already imprisoned under sentence for another crime.

48. When sentence shall be passed on a person already under sentence of imprisonment or transportation for another offence, the Court, if the sentence be for imprisonment, shall direct that such imprisonment shall commence at the expiration of the imprisoment or transportation to which such person shall have been previously sentenced; or, if such person shall be undergoing a sentence of imprisonment, and the sentence, on such subsequent conviction, be for transportation, the Court may direct that the sentence shall commence immediately or at the expiration of the imprisonment to which such person shall have been previously sentenced. Provided that nothing in this Section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

Proviso.

Local Government may order removal of a prisoner from one jail to another.

49. When any person is sentenced to imprisonment, it shall be lawful for the local Government to order the removal of such person, during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the jurisdiction of the same local Government.

Place of transportation not to be specified in sentences.

50. When any person shall be sentenced to transportation, the Court passing the sentence shall not specify in its sentence the place to which such person shall be sent for the purpose of undergoing the sentence.

Until he is transported, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to

have been undergoing his sentence of transportation during the term of his imprisonment [Section 58, Penal Code.]

Governor-General in Council to appoint place or places.

51. It shall be lawful for the Governor-General of India in Council from time to time to appoint a place or places within British India* to which persons sentenced to transportation shall be sent: and the local Government, or some Officer duly authorized by such Government, shall give orders for the removal of such persons to the place or places so appointed.

*s.3.

Local Government to direct removal of person sentenced to such place or places.

Execution of sentences of transportation passed on persons already undergoing transportation under a previous sentence.

52. When sentence of transportation shall be passed on a person already undergoing transportation under a sentence previously passed for another offence, it shall not be necessary for the local Government to order the removal of such person from the place in which he is so undergoing transportation.

Sentence of death.

53. When any person shall be sentenced to death, the sentence shall direct that such person be hanged by the neck till he is dead.

See Chap. XXVIII. Ss. 398-401, and Ss. 383 and 385.

The Governor-General in Council or the local Government may remit a punishment.

54. When any person has been sentenced to punishment for an offence, the Governor-General of India in Council, or the local Government, may, at any time, without conditions, or upon any conditions which such person shall accept, remit the whole or any part of the punishment to which he shall have been sentenced.

Sections 54 and 55 of the Indian Penal Code confer similar powers on the Government of India, or the Government of the place in which the offender shall have been sentence, dwith respect to the commutation [Section 54] of a sentence of death to any other punishment under that Code, and [Section 55] of a sentence of transportation for life to imprisonment, rigorous or simple, for a term not exceeding fourteen years. This Section of the Criminal Procedure, however, confers on the Governor General of India in Council and Local Government authority to remit the whole or any part of the [*i. e. any*] punishment to which any person shall have been sentenced. This would provide for the remission in whole or in part of sentences of transportation for terms [Section 59, Penal Code] of penal servitude [Section 56, and Act XXIV. of 1855], of forfeiture of property (Sec 62), of fine (Section 53), of solitary confinement [Sections 73, 74], and of whipping [Act VI. of 1864], as well as of sentences of death and transportation for life.

Party tried upon formal charge not liable to renewed prosecution.

55. A person who has once been tried for an offence, and convicted or acquitted of such offence, shall not be liable to be tried again for the same offence. Provided that any person may be tried for the offence of culpable homicide and punished for that offence, notwithstanding he may have been tried and punished for the act which caused the death, if at the time of his conviction for the said act death shall not have resulted, or shall not have been known by the Court which passed sentence to have resulted.

Proviso.

Convicted or acquitted. This would not include a case of *discharge* under Section 225 or Section 250, which would not amount to an acquittal. See note to Ss. 224 and 250

Thus, if a person were tried and punished for grievous hurt [Sections 325 *et seq.*, Penal Code], and the person injured were to die after the passing of the sentence for such offence, the offender may be tried and punished for culpable homicide [Sections 299, 304, Penal Code]. It will be necessary, however, to ascertain beyond doubt, that the death of the injured person was the result of the injury he received from the person sentenced, and that the injury was caused by the latter with the intention or knowledge required by Section 299, Penal Code, to constitute culpable homicide.

A person charged with criminal breach of trust may be found guilty of theft.

56. If upon the trial of any person charged with the offence of criminal breach of trust under Section 405 of the Indian Penal Code, or of criminal breach of trust as a carrier, wharfinger or warehouse-keeper under Section 407 of the said Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under the said Section 378.

Section 423 declares that no finding of criminal breach of trust under Section 405 or Section 407, Penal Code, shall be liable to be reversed or altered, because the offence proved was theft. If there should be doubt in the mind of any Court regarding the offence committed, the law [Section 381] permits an alternative finding in the form described in Section 382, clauses 5 and 11, but Section 72, Penal Code, declares that the punishment in such a case shall be that provided for the offence for

which the lowest punishment is prescribed, if the same punishment is not prescribed for all.

The word *Court* used in Section 56 would refer to a Court of Session, or a Magistrate with full powers, or a Sub-Magistrate of the 1st Class. See Schedule to Sections 374, 406, 407.

A person charged with criminal breach of trust as a servant may be found guilty of theft, or of theft as a servant.

57. If upon the trial of any person charged with the offence of criminal breach of trust as a clerk or servant under Section 408 of the Indian Penal Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, or the offence of theft as a clerk or servant of property in possession of his master under Section 381 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378, or Section 381, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

See note to Section 56, which applies to this Section *mutatis mutandis*.

A person charged with theft may be found guilty of misappropriation or breach of trust.

58. If upon the trial of any person charged with the offence of theft under Section 378 of the Indian Penal Code, or the offence of theft in a building, tent or vessel under Section 380 of the said Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of criminal breach of trust under Section 405 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 403, or Section 405, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

Section 424 provides that no finding of theft [Section 378, Penal Code], or theft in a building &c. [Section 380], shall be liable to be reversed or altered, because the offence proved by the evidence was dishonest misappropriation of property [Section 403], or criminal breach of trust

[Section 105]. If there is any doubt in the mind of the Court as to the offence committed, the law [Section 381] permits an alternative finding in the forms described in Section 382, c 5 and 11, but Section 72, Penal Code, declares that the punishment in such a case shall be that provided for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

A person charged with theft as a servant may be found guilty of misappropriation.

59. If upon the trial of any person charged with the offence of theft as a clerk or servant of property in the possession of his master, under Section 381 of the Indian Penal Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of such dishonest misappropriation under the said Section 404, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under Section 405 of the said Code, or the offence of criminal breach of trust as a clerk or servant under Section 408 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the offence under the said Section 403, Section 404, Section 405, or Section 408, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

See note to S. 58, which applies to this Section *mutatis mutandis*.

No person charged under the last four Sections, and found guilty, liable to be charged again.

60. No person charged and tried for an offence under any Section of the Indian Penal Code in the last four Sections of this Act mentioned, and found guilty of another offence under the provisions of any other of the said Sections of the Indian Penal Code, shall be liable to be afterwards prosecuted upon the same facts under the Section under which he was charged, or under the Section under which he was found guilty.

An amplification of the provision of S. 55.

Levy of fines.

61. In every case in which an offender is sentenced to a fine, it shall be

competent to the Court which sentences such offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment, to issue a warrant for the levy of the amount by distress and sale of any moveable* property belonging to the offender which may be found within the jurisdiction of the Magistrate† of the District.

CH. III. s. 61.

* S. 6.

† Ss. 14. 18.

Section 64, Penal Code, provides for sentences of imprisonment in default of payment of fine; Section 65 limits such an alternative sentence to one-fourth of the term of imprisonment which is the maximum fixed for the offence, *if the offence be punishable with imprisonment as well as fine;* (Section 45, Criminal Procedure, applies this restrictively to the powers exercised by the various grades of Magistrates); Section 66, Indian Penal Code, declares that such imprisonment may be of any description to which the offender may have been sentenced for the offence; by Section 67, *if the offence be punishable with fine only*, the term of such imprisonment is limited by the amount of fine imposed, according to a certain scale therein specified, which limits the maximum of imprisonment to six months; Section 68, declares that such imprisonment shall terminate whenever the fine is paid or levied by process of law: and by Section 69, the payment or satisfaction by levy of a portion of the fine relieves the convict from undergoing the proportionate term of imprisonment.

These Sections contain the law regarding the alternative imprisonment to be undergone in default of payment or satisfaction by levy of a fine imposed under the Indian Penal Code. Section 70, Penal Code, however, is especially important with reference to Section 61, Criminal Procedure: it declares that "the fine, or any portion thereof, which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under sentence, the offender be liable to imprisonment for a longer period than six years, than at any time previous to the expiration of that period; and the death of the offender does not discharge from liability any property, which would, after his death, be legally liable for his debts."

It must, however, be borne in mind that owing to the restrictive terms of Section 40, Penal Code, the provisions of Section 70, apply only to offences made punishable by *that* Code.

The warrant for the levy of a fine should be directed to a Police Officer, and should set a time for the sale and for the return of the warrant. If no one claims the property distrained, the Police have the power of selling it within the time that should be specified in the warrant, without any previous reference to the Magistrate: if a claimant comes forward, then the ownership of the property distrained must be determined by the Magistrate, and not by the Police. If, at any time subsequent to the return to the warrant and within the period of six years from the passing of the sentence, the fine or any part thereof remains unpaid (Section 70, Penal Code), and the Magistrate has, from information gained in any way, reason to think that any moveable property belonging to the offender is within his jurisdiction, he should issue a fresh warrant for the attachment and sale of that property within a specified period, returnable within a certain time. Calcutta High Court, 8, 1864.

A Magistrate, in sentencing an offender to fine, omitted to order the issue of a warrant for the levy of the amount by distress and sale. The Calcutta High Court, (Muddhoosoodun Dey, 15th August, 1865) held,

CH III
s 62

that his successor or the Magistrate of the district, may issue such warrant. Similarly with regard to a Sessions Judge [*Id* 428, 1865]. If an adverse title be set up to property attached by order of a Magistrate for the levy of a fine, the Magistrate should enquire into the matter [*Id.* 435, 1864].*

The Calcutta and Punjab Courts have distinctly ruled that a fine can be levied only on the moveable property of the offender that may be found within the jurisdiction of the Magistrate of the district in which he was tried and sentenced. The former Court has also pointed out (968, 1865), that this restriction applies only during the lifetime of the offender, but that *after his death* within six years from the date of passing of the sentence, or, if the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period, the fine may, under Section 70, Penal Code, be recovered from *any* property which may be legally liable for his debts. In the Punjab, the employment of the Police in the realisation of fines by distress and sale of property has been forbidden The transaction at this period has been declared to occupy the position of a judgment debt Agricultural implements, though not exempt from sale, should not be attached, unless unavoidable.

* s 15.

Magistrate may issue orders to prevent obstructions &c.

62. It shall be lawful for any Magistrate,* by a written order, to direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate* shall consider that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or is likely to prevent, or tends to prevent, danger to human life, health, or safety, or is likely to prevent, or tends to prevent, a riot† or an affray.‡

† S 146 I P C
‡ S 159 I. P. C

Orders passed under Section 62, Criminal Procedure, are not appealable [Madras High Court, 1863]; but though they are not appealable, their legality can be tested by disobedience, which will lead to a prosecution under Section 188, Penal Code, and bring that question to an issue.

A Magistrate is not competent to direct a person to abstain from holding a "hât" [market], on the representation of the holder of a rival "hât" that injury would be caused to his property. The loss which one man fears may be entailed upon him by the competition of another in the same line of business, is not injury to property such as is contemplated by Section 62, Criminal Procedure.—Calcutta High Court, 653, 1863. In another case, the same Court ruled that the terms of the law do not authorise a Magistrate to interfere with the exercise of his ordinary rights by a landholder, merely because such exercise may require vigilance on the part of the Police, and may, in the absence of such vigilance, lead to an affray. Amongst the rights of landholders is that of establishing "hâts" in any portion of their estates, and this right is not only an ordinary incident to the right of property, but it is in every instance a most valuable right. It is consequently not one with which the Magistrate can interfere under the power given to him by Section 62 The Court therefore reversed the order of the Deputy Magistrate, and declared that it will remain with the petitioner to hold his "hât" on whatever day seems

most convenient to him. Seeb Chunder Bhuttacharjee, 16th September, 1865. An order of a Magistrate under Section 62, does not bar or supersede the adjudication of the matter by a Civil Court or the execution of a decree. Held, that disobedience of the order of a Magistrate under Section 62, in pursuance of a decree of the Civil Court, subsequently obtained, did not render the party liable to punishment under Section 188, Penal Code. 5 Agra 108.

The non-compliance with an order issued under Section 62, is made punishable by Section 188, Penal Code, which declares that "whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both."

"*Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knew of the order that he disobeys, and that his disobedience produces, or is likely to produce, harm."

Magistrate may prohibit the repetition or continuance of public nuisances.

63. Any Magistrate* may enjoin any person not to repeat or continue a public nuisance.† * S. 15. † S. 268, I. P. C.

The term "person" is defined by the Penal Code, Section 11, to "include any Company or association, or body of persons, whether incorporated or not." If the definition of a public nuisance in the Penal Code be accepted, it would imply the extended signification of "person" thus described.

Orders passed under Section 63, are not appealable. Madras High Court, 1863.

CHAPTER IV. ss. 64—75.

Of the Summons.

Proceeding to compel appearance.

64. When an offence has been committed, or is supposed to have been committed, the proceeding, in order to compel the person known or suspected to have committed such offence to appear for the purpose of enquiry concerning the same, may be by summons or arrest.

Complaint.

65. A summons or a warrant of arrest may be obtained on a complaint as hereinafter provided.

CH. IV. SS. 66 & 67.

Examination of complainant.

66. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made before the Magistrate of the District,* or a Magistrate† who is authorized to receive such complaint without reference from the Magistrate of the District,* such Magistrate shall examine the complainant. The examination shall be reduced into writing, and shall be signed by the complainant, and also by the Magistrate.

* Ss. 14. 18.
† S. 15.

"Magistrate who is authorized to receive such complaint." The Governments of each of the Divisions of the Presidency of Bengal can, by Act X. of 1854, confer such a power on any Assistant or Deputy Magistrate. Unless such officers have been so empowered, they can only try charges within their competency which have been referred to them by the Magistrate of the district, or a Magistrate in charge of a division of a district. Officers with the full powers of a Magistrate are competent to receive and try any charge which is within their competency. Calcutta Sudder Court, 18, 1862: High Court, 25, 1866: Also Agra Court, Circular 4, 1862.

No time is prescribed by law within which a complaint or charge must be made: it depends upon the nature of the case. The delay must be explained, and should have due weight with the Magistrate, Jud. Com. Oude, 1863. The Calcutta High Court has declared [Circular 6, 1864], that a Magistrate is bound to receive all complaints, whether they be preferred orally or in writing, but after the examination of a complainant, he is not bound to record a written complaint; also, that the receipt of a written complaint shall not dispense with the subsequent examination of a complainant; further, [Circular 19, 1864] that in all depositions there shall be entered the name of the deponent, the name of his or her father, and, if a married woman, the name of her husband, the religion, caste, profession and age of the deponent, and the village and Pergunnah in which he or she resides.

Magistrate how to proceed on complaint.

67. The Magistrate before whom such complaint is duly made shall, if it appear to him that there is sufficient ground for proceeding, issue his summons, or, in cases in which a warrant may issue, his warrant for causing the person accused to appear before himself or some other Magistrate having jurisdiction. If, in the judgment of such Magistrate, there be no sufficient ground for proceeding, he shall dismiss the complaint.

The officer who examines the complainant should, in all cases, decide whether a summons or warrant should issue. Calcutta High Court, Cir. 6, 1864.

The distinction between offences in the enquiry into or determination of which a summons or warrant may be issued, is set forth clearly in Col. 4 of the Schedule annexed to this Act.

Although it is not absolutely necessary, complaints should be preferred in writing. Calcutta High Court, 87, 1862.

A Sessions Judge is not competent to order a Magistrate to proceed by issuing a summons or warrant, or to hold further enquiry in a case dismissed by him under Section 67, Criminal Procedure, before the issue of

a summons. If such a case exhibits negligence or ignorance on the part of a Magistrate, the Sessions Judge should report it to the High Court. *Id.* 432, 1863; also 3 Agra, 38.

Magistrate may take cognizance of offences without complaint made.

68. Except as is otherwise provided in Chapter XI of this Act, the Magistrate* of the District, or a Magistrate† in charge of a division‡ of a District, may, without any complaint, take cognizance of any offence which may come to his knowledge, and may issue a summons, or, in cases where a warrant may issue, a warrant of arrest against the person known or suspected to have committed such offence, in the same manner as if a complaint had been made against such person. The provisions of this Section shall not apply to the offences described in Chapters XIX, XX, and XXI of the Indian Penal Code.

* Ss. 14, 18.
† S. 15.
‡ S. 18.

Proviso.

Chapter XI., Criminal Procedure, (Ss. 166—178) relates to prosecutions in certain cases regarding offences specified therein which require special sanction for their trial. Chapters XIX., XX. and XXI. of the Indian Penal Code refer, respectively, to criminal breaches of contracts of service, to offences relating to marriage, and to defamation. The affinity that such offences have to civil actions, was, most probably, the reason why the Legislature required the prosecution of the party injured without the interference of the Magistrate.

A Subordinate Magistrate, placed by the Magistrate of the District in charge of certain Pergunnahs, is not a Magistrate in charge of a division of a district. Agra Sudder Court, Cir. 20, 1863.

The provisions of Section 68 enable a Magistrate to issue a summons or warrant on a charge of theft on the information of the servant of the party injured, and to proceed with the trial, Madras High Court, 1864, but the Magistrate should be satisfied that there is reasonable excuse for the absence of the principal. Calcutta High Court, 264, 1864.

The Calcutta High Court [965, 1865] has ruled that cases instituted under Section 68 cannot be referred for decision to any Subordinate Magistrate, but must be heard and decided by the Magistrate of the District, or Magistrate in charge of a Division of a District, who took cognizance of the offence. Neither Section 273 nor any other law permits any such case to be referred to a Subordinate Magistrate for enquiry or trial.

Summons, what it is to contain, and how to be directed.

69. Every summons issued by a Magistrate§ to an accused person shall be in writing and shall be signed and sealed by such Magistrate, and shall be in the form (A) given in the Appendix or to the like effect.

§ S. 15.

Summons by whom to be served.

70. A summons shall ordinarily be issued through a Police Officer; but the Magistrate issuing the summons may, if immediate service be necessary and no Police Officer be

immediately available, direct the summons to be served by any other person.

A similar provision is made for the issue of a warrant of arrest [Section 77], or of a search warrant [Section 115.]

The Calcutta High Court [Cir. 1st February, 1862] ruled, that, where the agency of the Police cannot be obtained, the expense of serving a summons must be defrayed by Government.

Summons how to be served.

71. The summons shall be served on the accused personally, or in case the accused person shall not be found, it may be left for him with some adult male member of his family residing with him.

A majority of the Judges of the late Sudder Court, Calcutta, [282, 1862] ruled, that the power of serving a summons on an accused person is not limited in any way, and that, following the procedure prescribed [Section 84] regarding warrants, a summons may be served on a party named in it, residing in the jurisdiction of any Magistrate without any application in the first instance to the authority of that particular district or division of a district.

It should be noted that this section does not refer to the *service* of a summons. The *service* of a summons on a witness differs very materially from that on an accused person See Sections 187, 188, 189, 190. Calcutta High Court, 996, 1865.

Summons should be served on Railway officials and employés through their Superior Officers. Government of Bengal, Cir. 199, Jan. 10th 1865.

Mode of service if accused cannot be found, &c.

72. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving Officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

For the procedure in the case of a witness, see Ss. 187, 254, 264, 275.

Notwithstanding summons, warrant may issue in certain cases.

73. A Magistrate may (notwithstanding such summons), either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

Summons or warrant when grantable for an offence committed beyond local jurisdiction.

74. The Magistrate* of the District or a Magistrate in charge of a division† of a District, may issue a summons or warrant for the apprehension of any person within such District† or division of a District† in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the high seas, or

* Ss. 14 18.

† S. 16.

in a foreign country, and for which, if committed within the jurisdiction of such Magistrate, he might issue a summons or warrant.

Provisions in this Chapter relating to a summons and its issue applicable to all summonses.

75. The provisions relating to a summons and its issue, contained in this Chapter, shall be applicable to every summons issued under this Act.

CHAPTER V. ss. 76—99.

Of the Warrant and its Execution.

Form of warrant.

76. Every warrant issued by a Magistrate* shall be in writing,† and shall be signed and sealed by such Magistrate, and shall be in the form (B) given in the Appendix, or to the like effect.

* s 15.
† s 10.

Warrants to whom to be directed.

77. A warrant shall ordinarily be directed to a Police Officer, but the Magistrate issuing a warrant may, if immediate service be necessary and no Police Officer be immediately available, direct the warrant to any other person.

A provision similar to that in Section 71 enacted for the service of a summons, and in Section 115 for the issue of a search warrant.

When directed to any person other than a Police Officer.

78. When a warrant is directed to a person other than a Police Officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

It will be observed that persons are not bound to give their aid, when a warrant is not directed to a Police Officer. By Section 82, however, "every person is bound to assist a Magistrate or Police Officer demanding his aid in the taking of any other person whom such Magistrate or Police Officer is bound to arrest."

To several persons jointly.

79. A warrant may be directed to several persons, and when so directed, may be executed by all, or by any one or more of such persons.

Police Officer may endorse warrant to another Officer.

80. A warrant directed to a Police Officer may also be executed by any other Police Officer whose name shall be endorsed upon the warrant by the Officer to whom the warrant is directed.

CH. V.
ss 81—84.

Magistrate issuing a warrant may personally superintend its execution.

* S. 15.

81. The Magistrate* by whom a warrant of arrest is issued, may attend personally for the purpose of seeing that the warrant is duly executed. The Magistrate* may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant.

By Section 110, a Magistrate may order the arrest of any person committing an offence in his presence.

All persons bound to assist in certain cases.

* S. 15.

† S 146.
‡ S 159.

82. Every person is bound to assist a Magistrate* or Police Officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot† or an affray‡, or in the taking of any other person whom such Magistrate or Police Officer is authorized to arrest.

Intentional omission to give such assistance is punishable under Section 187, Penal Code.

Where a warrant of a Magistrate must be executed.

§ S. 15.

|| Ss. 14. 18.

83. A warrant issued by a Magistrate§ shall ordinarily be executed (unless it be specially otherwise provided) within the jurisdiction of the Magistrate|| of the District in which it was issued.

Warrant executed in another jurisdiction.

* S. 15.

† Not *always* necessary, see S. 85

‡ Ss. 14. 18.

84. When any person against whom a warrant is issued by a Magistrate* shall escape, go into, or be, in any place out of the jurisdiction of the Magistrate issuing such warrant, the warrant may be executed in such place; and if the person against whom the warrant is issued is arrested in such place, the Police Officer, or other person executing the warrant, shall† carry him before the Magistrate‡ of the District, or some other Magistrate within whose jurisdiction the arrest was made. If the offence with which the person arrested is charged be bailable, and such person shall be willing and ready to give bail for his appearance before the Magistrate by whom the warrant was issued, the Magistrate before whom such person is brought, shall take bail of such person for his appearance accordingly, and shall release him from custody; and forward the recognizance or other bail-bond to the Magistrate by whom the warrant was issued. If the offence be not bailable, or if the person arrested be unable to find bail, he shall be forwarded to the Magistrate by whom the warrant was

issued. If the arrest be made within the local limits of the jurisdiction of a Supreme Court of Judicature,* the person accused, when arrested, shall be taken before the Chief Commissioner of Police, or a Police Magistrate. Such Chief Commissioner or Police Magistrate shall forward the person arrested to the Magistrate by whom the warrant was issued, or, if the offence with which the person arrested is charged be bailable, shall admit him to bail, and shall forward the recognizance or other bail-bond to such Magistrate.

If arrest be made within jurisdiction of a Supreme Court.

* In a Presidency Town.

"The Police Officer, or other person executing the warrant, shall carry him before the Magistrate of the District, or some other Magistrate within whose jurisdiction the arrest was made." Thus, in the Lower Provinces of Bengal where districts are generally split up into subdivisions or divisions (Section 18), the person arrested may be brought before the Subdivisional Magistrate.

Offences under the Penal Code are bailable, or non-bailable, as set forth in the Schedule hereto annexed.

85. If the place of arrest, under the last preceding Section, be within twenty miles from the place at which the warrant was issued, the person arrested may be carried, in the first instance, before the Magistrate who issued the warrant.

If arrest be made within 20 miles, person arrested may be carried before the Magistrate who issued the warrant.

86. It shall be competent to a Magistrate† issuing a warrant for the arrest of a person out of his jurisdiction, to direct the warrant to the Magistrate‡ of the District in which such person is, or is supposed to be, and to transmit the same by post. On receipt of the warrant by the† Magistrate to whom it is directed, he shall endorse his name on such warrant, and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the person named in the warrant be apprehended, he shall be carried before the Magistrate who endorsed the warrant, and shall be dealt with by such Magistrate as provided in Section 84 of this Act.

Warrant to be endorsed may be sent by post.

† S. 18.

‡ Ss. 11, 18.

87. A warrant issued under the last preceding Section for execution within the local limits of a Supreme Court of Judicature,§ shall be directed to the Chief Commissioner of Police, or to a Police Magistrate,

Warrants for execution within limits of Supreme Court to be addressed to Chief Commissioner or Magistrate of Police.

§ In a Presidency Town.

CH. V. SS. 88 & 89.

who shall proceed in the manner provided in Section 84 of this Act.

A warrant under Section 74 can be issued only by the Magistrate of the District, or a Magistrate in charge of a division of a District.

Magistrate how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

88. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of Section 74 of this Act, in respect of an offence known or suspected to have been committed in another District* or division* of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the enquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable. When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the Sudder Court.†

* S. 18.

† S. 19

"Unless he is authorized to complete the enquiry himself." The words evidently refer to the Special Jurisdiction created by Sections 31, 32, 33, for certain offences.

A Magistrate may, however, detain a person so arrested, and apply to the Sudder Court for permission [Section 35] to enquire into or determine the case, whenever he may consider that such will promote the ends of justice, or tend to the general convenience of the parties or witnesses.

Subordinate Magistrate how to proceed in such cases.

89. If the arrest was made under a warrant issued under Section 74 of this Act by a Magistrate subordinate to the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed, shall issue his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police Officer or other person executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued. If the offence of which the person arrested is suspected, shall have been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under Section 74 of this Act, shall send the person arrested to the Magistrate in charge of the division in which the offence was committed.

As a warrant under Section 74 can be issued only by the Magistrate of the District, or a Magistrate in charge of a division of a District, the Magistrate subordinate to the Magistrate of the District would be a Divisional Magistrate. The term clearly is not used necessarily in the sense it is mentioned in Section 22, as a Divisional Magistrate may, and very often is, an officer exercising the full powers of a Magistrate.

The latter part of the Section evidently follows out the principle laid down in Section 26, that ordinarily "every offence shall be enquired into, and determined in the District or division of a District in which the offence was committed."

Notification of substance of warrant.

90. A Police Officer or other* person executing a warrant of arrest, shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

* Ss. 77, 79.

Warrant how to be executed.

91. In making an arrest, the Police Officer or other person† executing the warrant, shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

† Ss. 77, 79.

Resisting an endeavour to arrest.

92. If a person against whom a warrant of arrest is issued, shall forcibly resist the endeavour to arrest him, it shall be lawful for the Police Officer or other person‡ executing the warrant, to use all such means as may be necessary to effect the arrest.

‡ Ss. 77, 79.

Section 224, Penal Code, declares that "whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence (*i. e.* offence punishable under that Code, Section 40) with which he is charged, or of which he has to be convicted, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both." Voluntarily obstructing any public servant, *i. e.* Police Officer, in the discharge of his public functions, is made punishable by Section 186, Penal Code. A threat of injury to a public servant (Police Officer), for the purpose of inducing him to forbear or delay to do any act connected with the exercise of his public functions, is punishable under Section 189, Penal Code. Acts against the person of a Police Officer acting in discharge of his duty, are provided for in Sections 332, 333, 353, Penal Code.

Section 78 declares that, "when a warrant is directed to a person other than a Police Officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in execution of the warrant;" and by Section 82, "every person is bound to assist a Magistrate or Police Officer demanding his aid in the taking of any other person whom such Magistrate or Police Officer is bound to arrest." The intentional omission to give such assistance is punishable under Section 187, Penal Code.

CH V. SS. 93—95.

Search of house entered into by person against whom warrant has been issued.

93. If there is reason to believe* that any person, against whom a warrant has been issued, has entered into, or is within any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police Officer or other person executing the warrant,† to allow such Police Officer or other person free ingress thereto, and to afford all reasonable faculties for a search therein.

* S. 26, P. C.

† Ss 77, 79

Voluntarily obstructing a Police Officer in the discharge of his public functions, is an offence punishable under Section 186, Penal Code; the intentional omission to render assistance, under Section 187; the harbouring of an offender, under Sections 212, 216; and the intentional resistance or illegal obstruction to the lawful apprehension of any other person for an offence [under Penal Code, see Section 40], under Section 225.

‡ Ss. 77, 79.

Breaking of outer or inner door or window.

94. The Police Officer or other person‡ authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused, or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking open a zenana or female apartment.

§ Schedule, Col. 4.

95. If information be received that a person accused of any offence, for which a warrant may§ issue, is concealed in a zenana or apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the Police Officer or other person‖ employed to execute the warrant, shall take such precautions as may be necessary to prevent the escape of the accused person; and if the accused person shall not deliver himself up, the Police Officer or other person authorized to execute the warrant may, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance, break open such zenana or apartment, and execute the process entrusted to him; first giving notice to any woman as aforesaid in such zenana or apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and affording her every reasonable facility for withdrawing.

‖ Ss. 77, 79

No unnecessary restraint.

96. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Party arrested to be brought immediately before the Magistrate.

97. The Officer or other* person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

* Ss. 77, 79.

No threat, promise, or caution, as to disclosure by party arrested.

98. No Police Officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure. But no Police Officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

Obtaining such a disclosure by hurt or grievous hurt, is an offence punishable under Sections 330, 331, Penal Code.

Provisions in this Chapter relating to a warrant and its issue applicable to all warrants.

99. The provisions relating to a warrant and its issue, contained in this Chapter, shall be applicable to every warrant issued under this Act.

CHAPTER VI. ss. 100—111.

Of Arrest without Warrant.

Police Officer may arrest without warrant in certain cases.

100. A Police Officer in the cases hereinafter mentioned may, without orders from a Magistrate and without a warrant, arrest—

First.—Any person who in the sight of such Police Officer shall commit an offence specified, in Column 3 of the Schedule annexed to this Act, as an offence for which Police Officers may arrest without a warrant.

Secondly.—Any person against whom a reasonable complaint has been made, or a reasonable suspicion exists of his having been concerned in any such offence.

Thirdly.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

CH. VI. s. 101.

Fourthly.—Any person who is a proclaimed offender.

Fifthly.—Any person who is found with stolen property* in his possession.

* S 410, I. P. C

Sixthly.—Any person who shall obstruct a Police Officer while in the execution of his duty.

Also in the cases provided for in S. 104.

With the second clause, the provisions of Section 141 should be borne in mind: "It shall be lawful for a Police Officer to pursue, with the view to arrest, any person accused of any of the offences specified, in column 3 of the Schedule annexed to this Act, as offences for which Police Officers may arrest without a warrant, into the limits of another Police Officer, whether subordinate to the same Magistrate as himself or to the Magistrate of any other District, and whether such place be under the same Local Government or not."

The following provisions of Act V. of 1861, Section 34, deserve attention in this place.

"Any person who, on any road or in any street or thoroughfare within the limits of any town to which this Section shall be specially extended by the Local Government, commit any of the following offences, to the obstruction, inconvenience, annoyance, riot, danger or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to fine not exceeding fifty Rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely:—

"*First.* Any person who slaughters any cattle, or cleans any carcase; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.

"*Second.* Any person who wantonly or cruelly beats, abuses, or tortures any animal.

"*Third.* Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such manner as to cause inconvenience or danger to the public.

"*Fourth.* Any person who exposes any goods for sale.

"*Fifth.* Any person who throws or lays down any dirt, filth, rubbish, or any stones, or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

"*Sixth.* Any person who is found drunk or riotous, or who is incapable of taking care of himself.

"*Seventh.* Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

"*Eighth.* Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure."

Vagabonds.

101. An Officer in charge of a Police Station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested

any person found lurking within the limits of such Station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen, or who is of notoriously bad livelihood.

In the instances given in Section 100, the arrest can be made spontaneously by any Police Officer: in the cases now specified, discretion to arrest is reposed only in a Superior Officer, *i. e.* one who is in charge of a Police Station. If the Officer in charge of a Police Station requires an officer subordinate to him to make such an arrest, he is required by Section 140 to deliver to such officer an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made. The Magistrate before whom a person arrested under Section 101 is brought, should proceed as directed in Chapter XIX, Sections 295—307.

Police may interfere to prevent offences.

102. It shall be the duty of every Police Officer to prevent, and he may interpose for the purpose of preventing, the commission of any offence specified, in Column 3 of the Schedule annexed to this Act, as an offence for which Police Officers may arrest without a warrant.

Information to be communicated.

103. It shall be the duty of a Police Officer who shall receive information of a design to commit any such offence,* to communicate such information to the Police Officer to whom he is subordinate, and to any other Officer whom it may concern to prevent or take cognizance of the commission of any such offence.

* S. 102.

The simple omission to give such information would be punishable under Section 176, Penal Code, but if there be any intention to defeat justice, the offence is provided for by Section 119.

May arrest to prevent offences.

104. A Police Officer, knowing of a design to commit any such offence† as aforesaid, may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

† S. 102.

Injury to public property.

105. A Police Officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public building, work of art, road, bridge, tank, well, or water-channel, or to prevent the removal or injury of any public land-mark or buoy, or other mark used for navigation.

The acts, the commission of which a Police Officer is hereby authorised to prevent, are punishable under Sections 430—434, Penal Code.

CH. VI.
s. 106 108.

* S. 26, P. C.

Person in charge of house entered into by another of whom Police Officer is in search, to allow ingress, &c.

106. If there is reason to believe* that any person liable to arrest under this Chapter without a warrant, of whom a Police Officer is in search, has entered into or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such Police Officer, to allow ingress thereto, and all reasonable facilities for a search therein.

See notes to Ss. 92, 93.

Procedure if ingress be not obtained.

107. If ingress to such house or place cannot be obtained under the last preceding Section, the Police Officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested, and send immediate information to a Magistrate.† If no warrant can be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police Officer may make an entry into such house or place and search therein.

† S. 15.

A Police Officer, it will be observed, is not authorised to break into a house for the purpose of arresting a person without a warrant, unless he has good reason for supposing that, by the delay in getting a warrant, the person to be arrested will have an opportunity of escaping. The persons who, by closing a house, prevent the action of the Police, render themselves liable to punishment under the Indian Penal Code. See notes to Sections 92, 93.

Person charged with an offence refusing to give his name and residence.

108. Any person who is known or suspected to have committed an offence for which a Police Officer is not authorized to arrest without a warrant, and who shall refuse on demand of a Police Officer to give his name and residence, or shall give a name or residence which there is reason to believe to be false, may be detained by such Police Officer for the purpose of ascertaining the name or residence of such person and with a view to future proceedings.

Thus a Police Officer should interfere to suppress an affray, that is, a disturbance of the public peace by two or more persons fighting in a public place [Section 159, Penal Code]; and on his demanding aid, every person is bound to assist him in suppressing that affray [Section 82, Criminal Procedure]: but as he cannot arrest without a warrant, persons committing an affray [see Schedule], he should act in the manner laid down in this Section.

Party arrested to be taken immediately before the proper authority.

109. A Police Officer having made an arrest under this Chapter, shall take or send the person arrested without unnecessary delay before the Magistrate who has jurisdiction in the case, or before the Officer in charge of a Police Station.

Arrest for an offence committed in the presence of a Magistrate.

110. When any offence is committed in the presence of a Magistrate, such Magistrate may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

Unlawful assembly to disperse on the order of a Magistrate &c.

111. A Magistrate or Officer in charge of a Police Station may command an unlawful* assembly to disperse, and it shall thereupon be the duty of the members† of such unlawful assembly to disperse accordingly.

* 141, P. C.
† 142, P. C.

The punishment for a non-compliance with such an order of a Magistrate, or an Officer in charge of a Police Station, is provided for by Section 145, Penal Code.

CHAPTER VII. Ss. 112, 113.

OF ESCAPE AND RE-TAKING.

Person arresting may re-take on escape and deal with the party arrested as on original taking.

112. If a person lawfully arrested under the provisions of this Act shall escape, or be rescued, it shall be lawful for the Police Officer or other person from whose custody the person so arrested shall have escaped, or have been rescued, to make fresh pursuit, and re-take him in any place, either within or without the jurisdiction where he was so in custody, and to deal with such person as such Police Officer or other person might have done on an original taking.

The procedure laid down in S. 84 should apparently be followed in such cases.

"Escaping," "rescuing" and "attempts to escape or to rescue," are punishable under Sections 224, 225, Penal Code; but in all these cases, the offence for which the person escaping or being rescued is in custody, must be an offence under the Penal Code. [See Section 40].

CH. VII. VIII. SS 113–116.

May adopt the same measures as on original taking.

113. In order to re-take any person, as provided in the last preceding Section, the Police Officer or other person making such fresh pursuit may adopt the same measures as he might have adopted on the original taking.

These measures are described in the last preceding chapter.

CHAPTER VIII. Ss. 114—132.

Of Search Warrant.

* S. 15.

When grantable by a Magistrate.

114. When a Magistrate* shall consider that the production of any thing is essential to the conduct of an enquiry into an offence known or suspected to have been committed, he may grant his warrant to search for such thing; and it shall be lawful for the Officer charged with the execution of such warrant to search for such thing in any house or place within the jurisdiction of such Magistrate. In such case the Magistrate may specify in his warrant the house or place, or part thereof, to which only the search shall extend.

How to be directed.

115. A search warrant shall ordinarily be directed to a Police Officer, but the Magistrate issuing the search warrant may, if immediate search is necessary, and no Police Officer be immediately available, direct the warrant to any other person.

A provision similar to that prescribed for the service of a summons [Section 70], or the issue of a warrant of arrest [Section 77].

A warrant to a Police Officer may be executed by another.

116. A search warrant directed to an Officer in charge of a Police Station may, if such Officer is not able to proceed in person, be executed by any Officer subordinate to such Officer. In such case the name of such subordinate Officer shall be endorsed upon the warrant by the Officer to whom the warrant is directed.

A similar provision is, by S. 80, made for the execution of warrant of arrest.

How to be executed out of jurisdiction of the Magistrate.

117. When it shall be necessary for a search warrant to be executed out of the jurisdiction of the Magistrate issuing the warrant, the Magistrate within whose jurisdiction the warrant is to be executed shall endorse his name on the warrant, which shall be sufficient authority for the Police Officer charged with the execution of such warrant to execute the same within the said jurisdiction; or the search warrant may be directed to the Magistrate within whose jurisdiction the search is to be made, and such Magistrate shall thereupon endorse his name on such warrant and enforce its execution in the same manner as if the warrant had been issued by himself.

Search warrants may in cases of emergency be executed without endorsement.

118. In any case in which there is reason to believe* that the delay occasioned by obtaining the endorsement of the Magistrate in whose District the warrant is to be executed, will prevent the discovery of the thing for which search is to be made, the Police Officer charged with the execution of the search warrant may execute the same in any place beyond the jurisdiction of the Magistrate by whom it was issued, without the endorsement of the Magistrate in whose jurisdiction that place is situate. If the thing for which search is made is found in such place, it shall be immediately taken before the Magistrate in whose jurisdiction it is found, and who, unless there be good cause to the contrary, shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

* s 26. P.C.

Thing found to be taken immediately to the Magistrate within whose jurisdiction it is found.

This is one of those cases in which the Police Officer has discretion to act. A similar discretion is allowed by Section 107. The principle applied to each case is the same, that justice should not be defeated by the delay which would be necessary to comply with legal form. A Police Officer acting in good faith would be protected by Sections 76, 79, Penal Code.

Procedure in such cases within local limits of Supreme Court.

119. If the thing searched for be found within the local limits of a Supreme Court of Judicature,† it shall be taken to the Chief Commissioner of Police or to a Police Magistrate, who shall act in the manner prescribed in the last preceding Section.

† Now H C in a Presidency town.

The Chief Commissioner of Police or a Police Magistrate within the local limits of a High Court, is treated as a Magistrate of a district.

Magistrate may, when necessary, issue search warrant to be executed in the jurisdiction of another Magistrate.

120. In any case in which it may appear necessary, a Magistrate may, by the warrant, order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made. When a Magistrate issues a warrant under this Section, he shall inform the Magistrate within whose jurisdiction the house or place to be searched is situate; or if the house or place be situate within the local limits of any Supreme Court of Judicature,* he shall inform the Chief Commissioner of Police of the issue of such warrant.

* H. C. in a Presidency town.

Magistrate may send search warrant by post to the Magistrate of another District.

Procedure to be observed by such Magistrate.

121. It shall be competent to a Magistrate† issuing a warrant for the search of any house or place out the jurisdiction of the Magistrate of the District,‡ to direct the warrant to the Magistrate of the District‡ in which such house or place is situate, and to transmit the same by post. On receipt of the warrant by the Magistrate to whom it is directed, he shall endorse his name on the warrant and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the warrant is to be executed within the local limits of any Supreme Court of Judicature,§ it shall be addressed to the Chief Commissioner of Police or to a Police Magistrate. In such case any property found on search made, may be dealt with as provided in Sections 118 and 119 of this Act.

† S. 15.

‡ Ss 14 18

§ H. C in a Presidency town.

Persons in charge of dwelling house, &c., to allow the search.

122. If the house or place to be searched is closed, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Officer or other person executing the warrant, to allow such Officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

A provision similar to that laid down in S. 93 for execution of warrants of arrest.

Place to be searched may be broken open.

123. A Police Officer, or other person authorized by a warrant to search any house or place, may break open any outer or inner door or window of the house or place, in

order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

A similar provision is by S. 94 made for execution of warrants of arrest.

Breaking of zenana or female apartment.

124. If the place ordered to be searched is a zenana or apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the Officer or other person charged with the execution of the warrant shall give notice to such woman in such zenana or apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw, and, after giving such notice and allowing a reasonable time for the woman to withdraw, and affording her every reasonable facility for withdrawing, such Officer or other person may enter such zenana or apartment for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

Search of house &c. to be made in the presence of witness.

125. The search of any house or place under this Chapter shall be made in the presence of two or more respectable inhabitants of the place in which the house or place searched is situate, but such persons shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by such Magistrate. The occupant of the house or place or some person in his behalf shall, in every instance, be permitted to attend during the search.

Occupant of the place searched may attend.

"Two or more respectable inhabitants of the place in which the house or place searched is situate." The Police should be careful to comply with this provision of the law. Disregard would give rise to suspicion as to the *bonâ fide* character of the search, and as to its having been conducted in the presence of "creatures" of the Police.

A Magistrate should ordinarily dispense with the attendance of witnesses to a house search. If their attendance be necessary at the Court of Session, they should be required to attend there, but they should not be subjected to unnecessary harassment. *Calcutta High Court*, 489, 1865.

Mode of searching females.

126. In any case in which it shall be necessary to cause a female to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

CH VIII. SS 127-129.

Search of house, &c., suspected to contain forged documents, &c.

127. If the Magistrate of the District* or a Magistrate† in charge of a division of a District,‡ upon information and after such enquiry as he may think necessary, has reason to believe§ that any house or other place is used as a place for the deposit or sale of stolen property,[1] or for the deposit or sale or manufacture of forged[2] documents or counterfeit[3] Government Stamps or counterfeit[3] coin,[4] or instruments or materials for counterfeiting[3] coin[4] or for forging,[5] or that any forged[2] documents or counterfeit[3] stamps or false seals or any counterfeit[3] coin[4] or instruments or materials used for counterfeiting[3] coin,[4] or for forging,[5] are kept or deposited in any house or other place, he may by his warrant authorize any Police Officer above the rank of a constable, peon, or burkundaz to enter, with such assistance as may be required, and by force if necessary, any such house or other place, and to search all such parts of the same as shall be specified in the warrant, and to seize and take possession of any stolen property,[1] documents,[6] stamps, seals, or coins[4] therein found which he may reasonably suspect to be forged,[2] stolen,[1] false,[7] or counterfeit,[3] and also of any such instruments and materials as aforesaid.

* S 14, 18.
† S 15
‡ S. 18
§ S. 26, P. C.
1 S. 410, P C.
2 Ss 470, 464, 463, 29 P C.
3 S 28, P. C.
4 S 230, P C.
5 S. 463, P C.
6 S. 29, P.C.
7 S. 464, P. C

Magistrate may attend personally.

128. The Magistrate by whom a search warrant is issued, may attend personally for the purpose of seeing that the warrant is duly executed. The Magistrate may also direct a search to be made in his presence of any house or place, for the search of which he is competent to issue a search warrant.

A similar provision is made by S. 81 with regard to warrants of arrest.

Inspection of weights and measures used in shops.

129. An Officer in charge of a Police Station may, without a warrant, enter any shop or premises, within the limits of such Station, for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept therein, whenever he shall have reason to believe[8] that there are in such shop or premises any weights, measures, or instruments for weighing which are false. If such Police Officer shall find in such shop or premises any weights, measures, or instruments that are false, he may seize the same and shall forthwith

8 S. 26, P. C.

give information of such seizure to the Magistrate having jurisdiction. CH. VIII. ss.130–132.

Offences relating to weights and measures are provided for by Chapter XIII. Sections 264, 267, Penal Code.

It should be noted that a Police Officer in charge of a Police station can *alone* exercise this power.

Procedure by Police Officer upon seizure of stolen property found on an offender.

130. The seizure by any Police Officer of property alleged or suspected to have been stolen,* or of property seized by any Police Officer under circumstances which create suspicion of the committal of any offence, shall be forthwith reported to the Magistrate of the District,† who shall thereupon make such order respecting the custody and production of the property as he shall think proper.

* S. 410 P. C.

† Ss. 14, 18.

Procedure if such property be unclaimed.

131. When any such property shall be unclaimed, the Magistrate of the District‡ may detain the same and shall issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim to the property to appear and establish his claim thereto within six months from the date of such proclamation.

‡ Ss. 14. 18.

Act V. of 1861, Section 25, declares that "it shall be the duty of every Police Officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district. The Police Officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district."

Section 26 repeats the provisions of Section 131 of the Code.

There is no special provision regarding the mode in which the proclamation under Section 131, shall be notified. The law has apparently left it to the discretion of such officers to give the matter that publicity which is essential for the ends of justice. It would, however, be well to follow the provisions of Section 183, which enacts that the proclamation for an absconding party, against whom a warrant has been issued, "shall be publicly read in some conspicuous place of the town or village in which such person usually resides, and shall be affixed on some conspicuous part of the ordinary abode of such person, or on some conspicuous place of such town or village. A copy of the proclamation shall also be affixed on some conspicuous part of the Court house of the Magistrate."

Procedure if no claimant appear within six months from date of proclamation.

132. If no person shall, within the period allowed, claim such property, and if the person in whose possession such property was found shall be unable to show that it was legally acquired by him, the property shall be at

the disposal of the Government, and may be sold under the orders of the Magistrate of the District.

A similar provision is to be found in Act V of 1861, S. 27

It is perhaps necessary to observe here that the provisions of Sections 131, 132 do not apply to *intestate property*, which must be forwarded without delay to the Civil Judge of the District with whom the disposal rests.

CHAPTER IX. ss. 133—162.

Preliminary Enquiry by the Police.

Police Officers to make enquiry into certain offences only when directed to do so by Magistrate.

133. No Police Officer shall, without an express order from a Magistrate,* enquire into or take cognizance of any offence punishable under the Indian Penal Code, other than the offences described, in Column 3 of the Schedule annexed to this Act, as offences for which a Police Officer may arrest without warrant. But it shall be competent to a Magistrate,* upon the report of a Police Officer or otherwise, to direct enquiry to be made by a Police Officer into any offence punishable under the Indian Penal Code or under any special† or local‡ law.

* S 15.
† S 4.
‡ S 5.

Saving of powers vested in Police Officers by any special or local law.

134. Nothing in the last preceding Section shall be held to interfere with the exercise of any powers which are vested in a Police Officer by any special§ or local‖ law, or with the performance of any duty which is imposed upon a Police Officer by any special§ or local‖ law.

§ S 4
‖ S 5

Act V. of 1861, S 34, is an important law in this respect. See note to S 100.

Upon complaint preferred, Officer in charge of Police Station to proceed in person or depute a subordinate Officer to make enquiry.

135. Upon complaint or information being preferred to an Officer in charge of a Police Station* of the commission within the limits of such Station of any of the offences specified, in Column 3 of the Schedule annexed to this Act, as offences for which Police Officers may arrest without warrant, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person, or shall depute one of his subordinate Officers to

* S. 162

proceed to the spot to enquire into the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender. Any Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute an Officer exercising any* of the powers of a Magistrate to proceed, to hold a preliminary enquiry into or otherwise to dispose of such case in the manner provided in this Act.

* S. 17.

* "He shall send immediate intimation to the Magistrate having jurisdiction." By this it is probably intended to refer to the Magistrate of the District or Magistrate in charge of a division of a District. By para. 2 of the Police Rules [See Appendix D] issued by the Government of Bengal, it is ordered, that the information shall be sent in a prescribed form to the District Superintendent of Police, and to the officer in charge of the Sub-district, by whom they will be submitted to the Magistrate of the District and the Magistrate having jurisdiction, respectively.

The Police Officer is bound to reduce into writing every complaint or information preferred to him [Section 139], but the complainant cannot be examined on oath. Calcutta Sudder Court, May 5th, 1862, and C. O. May 10th, 1862.

Except in cases not of a serious nature where local enquiry not necessary.

136. Provided that when any complaint is made against any person by name, and the case is not of a serious nature, it shall not be incumbent on the Officer in charge of a Police Station† to proceed in person or to depute a subordinate Officer to make an enquiry on the spot, unless such local enquiry shall appear to be necessary.

† S. 162.

If Officer in charge of Police Station see no sufficient ground for an enquiry.

137. If, on any complaint or information being preferred to an Officer in charge of a Police Station,‡ it shall appear to such Officer that there is no sufficient ground for entering on an enquiry, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall abstain from proceeding in the case, and shall report the substance of the complaint or information for the orders of the Magistrate.

‡ S. 162.

All persons to give information of offences.

138. It shall be the duty of every person who is aware of the commission of any offence made punishable under Sections 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, or 460, of the Indian Penal Code, to give information of the same to the nearest Police Officer, whenever he shall have reason to believe that, if such information be withheld,

CH. IX. S. 139.

the person who committed the offence may not be brought to justice, or may have his escape facilitated.

These offences are the following:—

382. Theft after preparation for causing death or hurt, &c.

392. Robbery.

393. Attempt to commit Robbery.

394. Robbery accompanied with hurt.

395. Dacoity.

396. Dacoity with murder.

397. Robbery or Dacoity with attempt to cause death or grievous hurt, &c.

398. Attempt to commit robbery or Dacoity, being armed with any deadly weapon.

399. Making preparation to commit Dacoity.

402. Assembling for the commission of Dacoity.

435. Mischief by fire, with intent to damage property to the amount of 100 Rupees or upwards.

436. Mischief by fire to a house, &c.

449. House trespass in order to the commission of an offence punishable with death.

450. House trespass in order to the commission of an offence punishable with transportation for life.

456. Lurking house trespass by night, or house breaking by night.

457. Lurking house trespass by night, or house breaking by night, in order to the commission of an offence punishable with imprisonment.

458. Lurking house trespass by night, or house breaking by night, after preparation made for causing hurt, &c.

459. Grievous hurt whilst committing lurking house trespass by night, or house breaking by night.

460. Being jointly concerned in the commission of lurking house trespass by night or house breaking by night, death or grievous hurt being caused or attempted.

The omission to furnish such information is punishable under Sections 176, 202, Indian Penal Code.

Complaint, &c., to be in writing.

* See S 162.

139. Every complaint or information preferred to an Officer in charge of a Police Station,* shall be reduced into writing, and the substance thereof shall be entered in a diary to be kept by such Officer, in such form as shall be prescribed by the local Government.

A complaint to a Police Officer shall not be made on oath. If it be false, it cannot therefore be made the subject of a charge under Section 193, Penal Code, but it might come under Section 182 or Section 211. Calcutta Sudder Court, 324, 1862. A Sessions Judge cannot, as a general rule, require that a complaint or information thus reduced to writing, should be filed with the record, when the case is sent up to him for trial. The substance being entered in the diary of a Police Officer, a Sessions Judge may order a Magistrate to forward the diary for his inspection, and he may summon the Police Officer under Section 367 to appear with the original writing which embodied the complaint. *Id.* 917, 1863.

Procedure when a Police Officer deputes another.

140. When any Officer in charge of a Police Station* requires any Officer subordinate to him, to make without a warrant an arrest which may lawfully be made by such Officer without a warrant, he shall deliver to the Police Officer required to make such arrest, an order in writing,† specifying the person to be arrested, and the offence for which the arrest is to be made.

* See S. 162.

† S. 10.

This would refer to the cases specified in Ss. 100 and 101, and to cases under enquiry regarding offences specified in Col. 3 of the Schedule as offences for which a Police Officer may arrest without a warrant, a complaint or information having been preferred regarding the same. A Police Officer cannot issue a summons or warrant. Their process is "an order in writing." Jud. Com., Punjab, Cir. 8, 21st January, 1862.

Police may pursue offenders into other jurisdictions.

141. It shall be lawful for a Police Officer to pursue, with a view to arrest, any person accused of any of the offences specified, in Column 3 of the Schedule annexed to this Act, as offences for which Police Officers may arrest without a warrant, into the limits of another Police Officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any District,‡ and whether such place be under the same local Government or not.

‡ S 18.

An amplification of the powers conferred on Police Officers by S. 100, Cl. 2.

Issue of search warrants by Officer in charge of Police Station.

142. Whenever an Officer in charge of a Police Station§ shall consider that the production of any thing is essential to the conduct of an enquiry into any offence which he is authorized to investigate, it shall be lawful for him to search or cause a search to be made for the same, in any house or place within the limits of such Station. In such case, the Officer in charge of the Police Station shall, if practicable, conduct the search for such thing in person. If unable to conduct the search in person, and there is no other person competent to make the search present at the time, it shall be lawful for the Officer in charge of the Police Station to require any Officer subordinate to him to make the search, and he shall deliver to such Officer an order in writing,‖ specifying the property for which search is to be made and the house or place to be searched; and it shall thereupon be lawful for such Subordinate Officer to search

§ S. 162.

‖ S. 10.

for such property in such house or place. The provisions of Sections 122, 123, 124, and 125 of this Act relating to search warrants, shall be applicable to a search made by or under the direction of an Officer in charge of a Police Station under this Section.

The process which a Police Officer is competent to issue is not a summons or warrant, but "an order in writing." Jud. Com., Punjab, Cir. 8, 21st January, 1862.

The law, it will be observed, is very strict in requiring such a search to be made by a Superior Police Officer. It is lawful for a Subordinate Police Officer to conduct such a search only if the superior Officer be unable personally to conduct it, and there is no other person competent to make the search present at the time; and he must even then obtain an order in writing specifying certain particulars.

A Police Officer can *proprio motu*, *i. e.*, without a search warrant from a Magistrate, search a house or place only within the limits of his own station. If, however, he holds a search warrant, he is invested with higher authority. See Sections 117 and 118.

* S. 162.

When one Officer of a Police Station may require another to issue a search warrant.

143. An Officer in charge of a Police Station* may require an Officer in charge of another Police Station, whether subordinate to the same Magistrate as himself or to a Magistrate of another District, to cause a search to be made in any house or place in any case in which he might cause such search to be made within the limits of his own Station.

† S. 162.
‡ S. 10.

Witnesses to be summoned.

144. An Officer in charge of a Police Station† may, by an order in writing,‡ require the attendance before himself of any person, being within the limits of his Station, who, from the statement of the complainant or otherwise, appears to be acquainted with the facts and circumstances of any case into which he is enquiring under Section 135 of this Act, and such person shall be bound to obey such requisition.

A Police Officer is not competent to issue a summons or warrant, but "an order in writing." Jud. Com., Punjab, Circular 8, January 21st, 1862.

Oral examination of witnesses by Police.

145. It shall be lawful for an Officer in charge of a Police Station or other Police Officer making an enquiry, to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case. Nothing in this Section shall preclude such Police Officer

from reducing into writing any statement made by the person so examined. Provided that any statement so reduced into writing shall not be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

Proviso.

As the Code of Criminal Procedure does not provide for the administering of an oath by a Police Officer, it is evidently the intention of the Legislature that such should not be administered. Calcutta Sudder Court Circular, 10th May, 1862.

[Under the now repealed law, Regulation XX. of 1817, Section 13 (Bengal Code), the complainant used to be examined on oath by the Police, but not the witnesses. It was optional for the Police to take down in writing the statements of witnesses in detail, but they were bound to enter in their report the substance of all material information received from witnesses.]

A dying declaration, reduced to writing by the Police, is not evidence in a case. The fact that it was really made, and its substance, must be proved on oath by the witnesses. Jud. Com. Cent. Prov., Feb. 3rd, 1863.

In connection with the permission thus given under certain restrictions to a Police Officer to reduce to writing any statement made to him by a person acquainted with the facts and circumstances of a case under enquiry, and a subsequent examination of such Police Officer on the trial, Act II. of 1855, Section 45 should be noted. "A witness shall be allowed before any Court to refresh his memory by any writing made by himself, or by any other person when the fact occurred, or immediately afterwards, or at any time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. In such case the writing shall be produced, and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it." The notes made by Police Officer should not be looked at by him, in order to refresh his memory, until they have been verified. He may then look at them and give his evidence on the point entered in them; but the notes themselves, by being used to refresh memory, do not thereby become evidence. Calcutta High Court, 1069, 1865.

No inducement to be offered to accused person to confess.

146. No Police Officer or other person shall offer any inducement to an accused person, by threat or promise or otherwise, to make any disclosure or confession.

Obtaining such a disclosure by hurt or grievous hurt, is punishable under Sections 330 and 331, Penal Code.

Police Officer not to record confession.

147. No Police Officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of ony offence. Provided that nothing in this Section shall preclude any Police Officer from reducing any such statement or admission or confession into writing for his own information or guidance.

Proviso.

Confession made to a Police Officer shall not be used as evidence.

148. No confession or admission of guilt made to a Police Officer, shall be used as evidence against a person accused of any offence.

Confession made while the accused is in custody of the Police shall not be used as evidence.

149. No confession or admission of guilt made by any person whilst he is in the custody of a Police Officer, unless it be made in the immediate presence of a Magistrate,* shall be used as evidence against such person.

* S. 15.

In order to give weight to confessions recorded under Section 149, there should always be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were quite free agents. Calcutta High Court, Kodal Kahar, 15th January, 1866.

Police Officer may give in evidence so much of any statement or confession made by the accused as relates distinctly to a fact thereby discovered.

150. When any fact is deposed to by a Police Officer as discovered by him in consequence of information received from a person accused of any offence, so much of such information, whether it amounts to a confession or admission of guilt or not, as relates distinctly to the fact discovered by it, may be received in evidence.

Enquiry by the Police.

151. If the person arrested appears from the information obtained to have committed the offence charged, and the offence is not bailable, the Officer in charge of the Police Station* shall forward him under custody to the Magistrate having jurisdiction in respect of the offence, and shall bind over the prosecutor and witnesses to appear on a fixed day before such Magistrate. When any Subordinate Police Officer has made any enquiry under this Chapter, he may be required by the Officer in charge of the Police Station to submit a report of such enquiry to him, or may do so without such instructions, and the Officer in charge of the Police Station shall then proceed as if he had made the enquiry himself.

* See S. 162.

"The Magistrate having jurisdiction." This would probably refer to the Magistrate of the District, or the Magistrate in charge of a Division of a District, or the Magistrate who, under Section 133, may have directed the enquiry to be made.

The evidence found by the Police should be sent in as found, and not kept until it is all complete. Calcutta High Court, Kodal Kahar, 15th January, 1866.

Accused not to be detained by the Police beyond 24 hours without special authority.

152. No Police Officer shall, without the special order of a Magistrate, detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable: such period in no case to exceed twenty-four hours. If the enquiry has not been completed within twenty-four hours, the Officer in charge of the Police Station shall, nevertheless, forward the accused to the Magistrate with a short despatch stating the offence for which the accused has been arrested, if there are grounds for believing that the accusation is well founded.

Police how to proceed in cases of deficient evidence.

153. If it shall appear to the Officer in charge of the Police Station* that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of the accused person to the Magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate.

* See S. 162.

For the form prescribed by the Government of Bengal for this report and for the instructions as to its preparation, see Appendix D.

Daily record of proceedings.

154. A Police Officer making an enquiry under this Chapter, shall day by day enter his proceedings in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a statement of the circumstances elicited by his enquiry, and shall forward day by day a copy of such diary to the District Superintendent of Police, who shall without delay bring to the notice of the Magistrate of the District† any part of such diary which he shall consider it to be important that such Magistrate shall know. The Magistrate of the District† shall be entitled to call for and inspect such diary. In cases where there is no District Superintendent of Police, the Police Officer shall forward day by day a copy of the diary to the Magistrate of the District.† Such diary shall not be evidence of the facts stated therein, except against the Police Officer who made it.

† Ss. 14, 18.

Report of Police Officer of what to consist.

155. The enquiry shall be completed without unnecessary delay, and as soon as it is completed, the Police Officer

making the enquiry shall forward to the Magistrate a report in such form as shall be prescribed by the local Government, setting forth the names of the parties, the nature of the complaint, and the names of the witnesses, without any expression of opinion as to the guilt of the accused person, and shall also transmit any weapon or article which it may be necessary to produce before the Magistrate. The Police Officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance. If the accused person be detained in custody, he shall state the fact and the cause of his detention.

For the forms prescribed by the Government of Bengal for Police reports and instructions as to their preparation, see Appendix D.

Bail.

156. A person accused of any offence entered as not bailable in Column 5 of the Schedule annexed to this Act, shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him. But a person accused of any other offence shall be admitted to bail, if sufficient bail be tendered for appearance before the Magistrate having jurisdiction in respect of the offence.

Bail not to be excessive. Terms of security.

157. The bail to be taken under the last preceding Section shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate, on or before a fixed day, to answer the complaint.

Prosecutors and witnesses to execute recognizances to appear before the Magistrate.

158. Every prosecutor and witness, whose attendance before the Magistrate may be deemed necessary by the Police Officer making the enquiry, shall execute a recognizance in the form (E) given in the Appendix, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day, which shall be the day whereon the accused person is to appear, if he shall have been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody. The Officer in whose presence the recognizance is executed, shall forward it with his

report to the Magistrate, and shall deliver to the prosecutor and witnesses a duplicate of the despatch. The prosecutor or witnesses, unaccompanied by any Police Officer, shall be required to deliver in person such duplicate to the Magistrate.

Section 221, enacts that "the power given by the two preceding Sections" [*i. e.* Sections 219, 220] "may be exercised by every Criminal Court in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court, according to the conditions of such recognizance or bail." By Section 219, "whenever by reason of default of appearance of the person executing the personal recognizance, the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty by the attachment and sale of the moveable property belonging to such person, which may be found within the jurisdiction of the Magistrate of the district," Section 220 lays down the course to be followed in enforcing payment on the part of sureties.

Prosecutors and witnesses not to be subjected to restraint.

159. A Police Officer shall not subject any prosecutor or witness to restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any prosecutor or witness shall refuse to attend, or to execute the recognizance directed in the last preceding Section, it shall be competent to the Officer* in charge of a Police Station to forward such prosecutor or witness under custody to the Magistrate, who may detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the hearing before the Magistrate.

Recusant prosecutor or witness may be forwarded in custody.

* S. 162.

Police to report all apprehensions.

160. Officers† in charge of Police Stations shall report to the Magistrate of the District‡ the cases of all persons apprehended within the limits of their respective Stations, whether such persons shall have been admitted to bail or otherwise; and no person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of a Magistrate.

† S. 162.

‡ Ss. 14, 18.

Police to make immediate enquiry and report on unnatural and sudden deaths.

161. It shall be the duty of the Officer§ in charge of a Police Station, on receiving notice or information of the unnatural or sudden death of any person, immediately to give intimation to the nearest Magis-

§ S. 162.

trate, and to proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, to make enquiry, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted. The report shall be signed by such Police Officer and other persons or by so many of them as shall concur therein, and shall be forthwith forwarded to the Magistrate. When there may be any doubt regarding the cause of death, such Police Officer shall forward the body with a view to its being examined by the Civil Surgeon, if the state of the weather and distance will admit of its being so forwarded without risk of putrefaction on the road. In the Presidencies of Madras and Bombay, it shall be the duty of the Head of the Village in like manner to make the enquiry and report as aforesaid.

The Jud. Com. Punjab, [10th January, 1862] instructed the Police to hold enquiries in all cases of unnatural or sudden death; but if the homicide did not appear to have been culpable [Section 299, Penal Code], he directed them not to interfere or mulct the perpetrator.

On the occurrence of a Railway accident, the Government of Bengal has ordered that the inquest or other investigation shall be conducted by the District Superintendent of Police in person, and the judicial investigation by the Magistrate at the nearest Railway Station to the scene of accident Government order, 8th September, 1865.

By whom the powers of the Officer in charge of Police Station may be exercised in his absence or illness.

162. The powers to be exercised by an Officer in charge of a Police Station under this Chapter, shall be exercised in the event of his absence or illness by the Police Officer next in rank present at the Police Station, above the rank of a constable, peon or burkundaz.

CHAPTER X. ss. 163—165.

Of Contempts and Disobedience of Orders.

Procedure in certain cases of contempt.

163. When any such offence as is described in Section 175, 178, 179, 180, or 228 of the Indian Penal Code, is com-

mitted in the view or presence of any Civil, Criminal, or Revenue Court, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding two hundred Rupees, or by imprisonment in the Civil Jail for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding two hundred Rupees should be imposed upon him, such Court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or if the accused person be a European British subject, to a Justice of the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or, if sufficient bail be not tendered, shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate, and it shall be competent to such Magistrate to adjudge such offender to punishment, as provided in the Section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and shall have the same powers of punishing the offender as are vested by the Statute 53 George III, c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said Statute. If such Justice of the Peace shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature.* In no case tried under this Section shall any Magistrate adjudge imprisonment or a fine exceeding two hundred

* Now H C in Presidency towns.

Rupees for any contempt committed in his own presence against his own Court.

A similar enactment is contained in Act XXIII. of 1861, Section 21, for Civil Courts.

Section 175, Penal Code, relates to the omission to produce a document before a public servant by a person legally bound to produce such document.

Section 178 relates to the refusal of a person to bind himself by an oath to state the truth, when duly required so to bind himself by a public servant.

Section 179 relates to the refusal of a person, legally bound to state the truth, to answer any question put to him by a public servant in the exercise of his legal powers.

Section 180 relates to the refusal of a person to sign a statement made by him on lawful demand of a public servant.

Section 228 relates to an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

The punishment prescribed by 53 George III. c. 155, Section 105 [see Appendix B.], is fine of 500 Rupees, or, in default of payment or non-realization, imprisonment for two months. Sentences passed under this statute, are, by Section 410, appealable to the "Court of Session having jurisdiction at the place at which the appeal would have been heard, had the sentence been passed by a Magistrate subordinate to such Court." It is further enacted that "cases appealed under this Section shall not be afterwards liable to revision by means of a writ of certiorari: Provided that nothing in the Section shall be held to take away the power of quashing any conviction by means of a writ of certiorari in any other case than when there has been such an appeal as aforesaid."

Discharge of an offender on his submission.

164. When any person has been sentenced to punishment, or forwarded to a Magistrate or Justice of the Peace for trial, under the last preceding Section, for refusing or omitting to do anything which he was lawfully required to do, it shall be competent to the Court to discharge the offender, or to remit the punishment, on the submission of the offender to the order or requisition of such Court.

A similar provision is enacted by S. 22, Act XXIII. of 1861, specially for Civil Courts.

Procedure in all except certain cases when the offender is a European British subject.

165. When any such offence as is described in Chapter X. of the Indian Penal Code, except Sections 175, 178, 179, and 180, is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court, by a European British subject, such offence shall be cognizable only by a Magistrate who is a Justice of the Peace, and such Magistrate shall have the same powers of punishment for such offence as are vested by the Statute 53 George III. c. 155, s. 105, in

a Justice of the Peace for the punishment of an assault, and may deal with the offender on conviction in the same manner as is provided in that behalf in the said Statute. If such Magistrate shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature.†

* Now H C in Presidency towns.

Chapter X. of the Indian Penal Code, Sections 72—190, relates to "contempts of the lawful authority of public servants."

See note to Section 163.

CHAPTER XI. ss. 166—178.

PROSECUTIONS IN CERTAIN CASES.

Prosecutions for certain offences not to be instituted, but under authority of Government or of a duly empowered Officer.

166. A charge of an offence punishable under Chapter VI* of the Indian Penal Code, except Section 127, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council, or the local Government, or some Officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate General.

* *I. e.* offences against the State.

Section 127, Penal Code, relates to the receipt of property, knowing the same to have been taken in war against an Asiatic power in alliance or at peace with the Queen, or by depredation on the territories of such power.

Prosecution against Judges, &c.

167. A charge of an offence punishable under the Indian Penal Code, of which any Judge† or any public servant‡ not removable from his office without the sanction of the Government, is accused as such Judge† or public servant,‡ shall not be entertained against such Judge† or public servant,‡ except with the sanction or under the direction of the local Government, or of some Officer empowered by the local Government, or of some Court or other authority to which such Judge† or public servant‡ is subordinate, and whose power so to sanction or direct such

† S 19, P. C.
‡ S 21, P. C.

prosecution the local Government shall not think fit to limit or reserve.

The Calcutta High Court has declared [Cir. 20, 1864] that this section relates to offences specified in Chapter IX. of the Indian Penal Code and to no other. Offences committed against the person or property of individuals by one who happens to be a public servant are not necessarily convicted by him *as such public servant* in the sense in which these words are used in the Penal Code, and, unless committed in that character, must be regarded as the acts of *individuals in their private capacity;* charges, therefore, founded on such acts do not need the sanction of Government or other competent authority, before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are.

Prosecution for certain offences under Chapter X of the Penal Code not to be instituted, but with sanction of the public servants concerned.

168. A charge of a contempt of the lawful authority of any Court or public servant,* or of any other offence against a public servant§ as such, described in Chapter X. of the Indian Penal Code, not falling within Section 163 of this Act, shall not be entertained in any Criminal Court,† except with the sanction or on the complaint of the Court or public servant concerned, or, if such servant is an inferior ministerial servant, with the sanction or on the complaint of his official superior. The prohibition contained in this Section shall not apply to the offences describin Sections 189 and 190 of the Indian Penal Code.

* S 21, P. C.

† S 11.

The term "any Court" here used requires definition. It may denote any Civil or Criminal Court, as throughout this Chapter these words are coupled together, or it may also include a Revenue Court, [See Section 163]. Chapter X of the Indian Penal Code relates to "contempts of the lawful authority of public servants."

Section 189 refers to the holding out of a threat of injury to a public servant, or to a person in whom the public servant is believed to be interested, for the purpose of inducing him to do or to forbear or delay to do any act connected with his public functions.

Section 190 refers to the holding out of any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such, to give such protection, or to cause such protection to be given.

Prosecution for certain offences against public justice not to be instituted but with sanction of the authority before which the offence was committed.

169. A charge of an offence against public justice, described in Section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228, of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court,‡ shall not be entertained in the Criminal Courts,‡ except with the sanction of the Civil or Criminal Court, before

‡ S. 11.

or against which the offence was committed, or of some other Court to which such Court is subordinate. Such sanction may be given at any time.

Act XXIII. of 1861, Section 16, specially provides for such offences, [excepting offences falling under Sections 211 and 228], when they may appear to a Civil Court to have been committed in any case pending before it. Section 169, however, enhances the powers conferred on Civil Courts by that law.

Sections 193, 194, 195, Indian Penal Code, relate to the giving or fabricating of false evidence; but the two last prescribe an enhanced punishment if there be an intention to cause, or a knowledge that such act will be likely to cause, a person to be convicted: Section 196 relates to the corrupt using of false or fabricated evidence: Section 199 relates to the making a false statement in a declaration which is by law receivable as evidence on a point material to the object for which such declaration is made or used: Section 200, to the corrupt using or attempt to use such declaration: Section 205, to false personation for the purpose of any act or proceeding in a suit Section 206, to the fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree: Section 207, to a fraudulent receipt of or claim to such property: Section 208, to a fraudulent suffering a decree for a sum not due: Section 209, to the fraudulent, dishonest, or malicious making of a false claim in a Court of Justice: Section 210, to the fraudulent obtaining of a decree for a sum not due: Section 211, to the making of a false charge with intent to injure: Section 228, to an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

The Calcutta High Court cancelled a commitment made by a Magistrate, holding that it had been made without jurisdiction, because the Civil Court had, under Section 169, granted permission to the prosecutor to institute, against certain persons, a criminal charge of false evidence or of an offence against public justice, whereas, without obtaining further permission from the Civil Court under Section 170, the Magistrate committed the accused under Sections 467 and 471, Penal Code, such offences not being among those for which a prosecution had been sanctioned. The Court directed the Magistrate either to recommit the parties in accordance with the sanction already given, or, if he thought necessary, to apply to the Civil Court for sanction under Section 170. *Id.* Dwarkanath Ghose, February 3rd, 1865. A Magistrate cannot take security for the appearance of certain persons charged before him with having intentionally given false evidence before a Collector, without having first obtained jurisdiction from the Collector to enquire into or determine such a charge. *Id* Judoo Chunder Bose, 11th September, 1865. A Magistrate cannot proceed against other persons than those against whom a prosecution has been sanctioned by a Civil Court. Should the evidence disclose the guilt of other persons, the sanction of the Civil Court should be obtained before further proceedings are taken. 3, Agra, 75.

A Collector cannot sanction the institution of a criminal prosecution out of proceedings before a Deputy Collector in a case under Act X of 1859, in which the appeal would not lie to him, but to the Judge; as the Deputy Collector, in such a matter, would be subordinate not to him, but to the Judge 2, Agra, 373. A Court, before sanctioning a criminal prosecution, should satisfy itself that there are *primâ facie* grounds for the same. 2, Agra, 318.

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Section 169 goes beyond the former law which permitted prosecutions to be instituted only with the sanction of the Court before which the perjury had been committed.

The Calcutta High Court by a full Bench has ruled that, as a Civil or Criminal Court, it cannot entertain an appeal against any sanction to, or order for, a criminal prosecution under Section 169 or Section 170, nor has it authority to order such proceedings to be stayed. Ram Pershad Hajam, February 12th, 1866.

Prosecution for certain offences relating to documents not to be instituted but with the sanction of the Court in which such documents were given in evidence.

170. A charge of an offence relating to documents described in Section 463, 471, 475, or 476, of the Indian Penal Code, when the document shall have been given in evidence in any proceedings in any Court, Civil or Criminal* shall not be entertained in any Criminal Court* against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate. Such sanction may be given at any time.

* S. 11.

This Section confers on Civil Courts higher powers than those conferred by Section 19, Act XXIII. of 1861, which generally re-enacted the provisions of Section 2, Act I. of 1848.

Section 463, Indian Penal Code, refers to forgery: Section 471, to the fraudulent or dishonest using of a forged document: Sections 475, 476, to the counterfeiting a decree or mark used for authenticating documents, or possessing counterfeit marked material.

The rulings cited in the note to Section 169, apply generally to cases under Section 170.

Mode of proceeding in cases mentioned in the last three preceding Sections.

† S. 11.

171. When any Court, Civil or Criminal,† is of opinion that there is sufficient ground for investigating any charge mentioned in the last three preceding Sections, the Court, after making such preliminary enquiry as may be necessary, may send the case for investigation to any Magistrate having power to try or commit for trial the accused person for the offence charged, and such Magistrate shall thereupon proceed according to law, and the Court shall have power to send the accused person in custody or to take sufficient bail for his appearance before such Magistrate, and may bind over any person to appear and give evidence on such investigation.

A case once made over to a Criminal Court for investigation of a criminal charge must be disposed of by the Magistrate, either by the acquittal, conviction or commitment of the accused. It cannot be returned to the Civil Court 3, Agra, 21.

A preliminary enquiry held by a Civil Court under Section 171, is not judicial, and should not therefore be on oath. The Magistrate on

receiving such a case should commence it *de novo*. Jud. Com. Punjab, 1610, 1st April, 1862.

Power of Court of Session in respect of such offences committed before it.

172. It shall be competent to a Court of Session* to charge a person for any such offence committed before it or under its own cognizance, if the offence be triable by the Court of Session* exclusively, and to commit or hold to bail and to try such person upon its own charge. In such case the Court of Session* shall have the same power† of summoning and causing the attendance at the trial of the witnesses for the prosecution or for the defence which is vested in a Magistrate by this Act. Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial.

* s. 13.

† 186, et seq.

"Within its own cognizance." Proceedings before a Magistrate on an enquiry preliminary to commitment are within these terms; also an appeal before a Court of Session, or a case taken up under Section 434, Criminal Procedure. Agra Sudder Court, 28th August, 1864.

Civil Courts empowered to complete investigation and commit accused to Court of Session.

173. In any case triable by the Court of Session‡ exclusively, it shall be lawful for any Court of Civil Judicature before which any such offence was committed, instead of sending the case for investigation to a Magistrate, to complete the investigation itself, and to commit or hold to bail the accused person to take his trial before the Court of Session.‡

‡ s. 13.

A Civil Court acting under Section 173, cannot issue a warrant for the apprehension of any party not before the Court. This Section and Section 175 apply to cases in which the alleged offender is in Court or within the power of the Civil Court. Calcutta High Court, 1774, 1863.

The procedure prescribed for Magistrates should be followed in cases taken up under Section 173. Processes may be sent directly through the Police or by means of the Magistrate. Jud. Com. Punjab, 1863.

The Calcutta High Court held that when a collector is acting under Act X. of 1859, he is a Judge [Section 19, Penal Code], and therefore his Court is in such a matter a Court of Civil Judicature, with power to proceed under Section 173. [Bunsee Singh, 21st December, 1864.] A preliminary enquiry held by a Civil Court under Section 173 should be conducted in the manner prescribed in Chapter XII. of that Code. Jud. Com. Punjab, 1610, April 1st, 1862. When a Civil Court elects to proceed under Section 173 instead of Section 171, it is bound to complete the investigation in the way in which it would have been completed, if the case had been sent for investigation to a Magistrate. 2, Agra, 349.

Procedure by Civil Court in such cases.

174. When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinafter provided, and shall transmit the same with

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the order of commitment and the record of the case to the Magistrate* of the District or other Officer exercising any† of the powers of a Magistrate, and such Magistrate or other Officer as aforesaid shall bring the case before the Court of Session,‡ together with the witnesses for the prosecution and defence.

* Ss. 14, 18
† S 17
‡ S 18.

Compare Act XXIII of 1861, S 18.

The duties to be performed by a Magistrate under Section 174 being only ministerial, the law has evidently intentionally placed them within the competence of an officer exercising *any* of the powers of a Magistrate.

§ S 13.

Court of Session or Civil Court may exercise all the powers of a Magistrate as to binding over persons to give evidence.

175. Whenever any Court of Session§ or Civil Court shall commit or hold to bail any person for trial under the last three preceding Sections, such Court may also bind over any person to give evidence, and for that purpose may exercise‖ all the powers of a Magistrate.

‖ S 232

See notes to S. 173.

¶ S 13.

Magistrates not empowered to commit, to send the case to Magistrate competent to do so.

176. If any such offence, triable by the Court of Session¶ exclusively, be committed before a Magistrate not empowered to commit for trial before a Court of Session, such Magistrate shall send the case to a Magistrate competent to make such commitment, who shall proceed to pass such order in the case as he may think proper.

Prosecution for adultery not to be instituted except by the husband.

177. A charge of an offence under Section 497 of the Indian Penal Code shall not be instituted except by the husband of the woman.

Section 497, Penal Code, relates to adultery.

A minor can act under Section 177, Criminal Procedure, with the aid of his nearest friend. Jud. Com. Punjaub, 1863.

Prosecution for enticing away a married woman not to be instituted except by husband or person in charge of the woman.

178. A charge of an offence under Section 498 of the Indian Penal Code, shall not be instituted, except by the husband of the woman, or by the person having care of such woman on behalf of her husband.

S. 498, Penal Code, refers to the enticing or taking away or detaining with a criminal intent a married woman.

It is immaterial whether the woman is an adult or a minor. Jud. Com. Punjab, 3637, August 6th, 1862.

CHAPTER XII. ss. 179—232.

OF PRELIMINARY ENQUIRY BY THE MAGISTRATE IN CASES TRIABLE BY THE COURT OF SESSION.

ss 179, 180.

Magistrate may issue his warrant.

179. When a complaint is made before a Magistrate* that any person has committed, or is suspected to have committed, any of the offences specified, in Column 7 of the Schedule annexed to this Act, as triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session, it shall be lawful for such Magistrate to issue his warrant to apprehend such person. Provided that in any such case the Magistrate to whom such complaint is made may, if he shall think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, issue his summons requiring him to appear to answer to such complaint.

* s 15.

May issue a summons instead of a warrant.

Postponement of issue of process.

180. If the Magistrate† see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the person complained against, and direct a previous enquiry to be made into the truth of the complaint, either by means of any Officer subordinate to such Magistrate, or of a local Police Officer, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complaint. If such enquiry is made by means of some person other than an Officer exercising any of the powers‡ of a Magistrate or a Police Officer, such person shall exercise all the powers vested by this Act in an Officer in charge of a Police Station, except that he shall have no power to make an arrest. Nothing contained in this Section shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

† s 15.

May dismiss the complaint.

‡ s 17.

CH. XII. ss. 181-183.

Magistrate may direct bail to be taken.

181. It shall be in the discretion of the Magistrate* in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct by endorsement on the warrant that, if such person be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate to be named in the warrant on a specified day to answer the complaint, the Officer to whom the warrant is directed shall accept such bail, and shall release the person from custody. In the event of bail being given, the Officer shall forward the bail-bond to the Magistrate.

* s. 15.

For form of warrant, see Appendix B. to this Code.

Magistrate may dispense with the personal attendance of the accused.

182. The Magistrate may, if he see sufficient cause, dispense with the personal attendance of the accused person, and permit him to appear by an agent duly authorized to act in his behalf. But it shall be in the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of the accused person.

The personal attendance of the accused person at the time of passing the final order or sentence, in cases enquired into under this Chapter or determined under Chapter XIV. is apparently contemplated both by the terms of Sections 226 & 227, and Sections 251 & 252, as well as by the intentional omission in this Section of the provision contained in Section 261, the corresponding Section for trials in petty cases.

There is no appeal against the order of a Magistrate refusing to dispense with the personal attendance of an accused person. Calcutta High Court, 567, 1862.

Section 432 declares that "every person charged before any Criminal Court with an offence may of right be defended by Counsel or authorized Agent." This has, however, been qualified by Act XX of 1865, section 40, which requires "the permission of the presiding Judge or Magistrate," if the authorised Agent be not a Pleader or Mookhtear duly qualified under that Act; and it further declares that "no person so appearing, pleading, acting, or assisting, shall be entitled to recover any fee or reward therefor."

Proclamation for an absconding party.

183. If any person accused of an offence absconds or conceals himself, so that upon a warrant issued against him he cannot be found, the Magistrate shall, if satisfied that such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written† proclamation, requiring such person to appear to answer the complaint within a fixed period not less than thirty days. The proclamation shall be publicly

† s. 10

read in some conspicuous place of the town or village in which such person usually resides, and shall be affixed on some conspicuous part of the ordinary place of abode of such person, or on some conspicuous place of such town or village. A copy of the proclamation shall also be affixed on some conspicuous part of the Court-house of the Magistrate.

Before issuing a proclamation or order of attachment of property, a Magistrate is bound to satisfy himself, by examination by the officer to whom the warrant is directed, or in some other manner, that the accused is evading justice. Calcutta High Court, Bishonath Sircar, August 18th, 1865. Madras High Court, 1863.

A proclamation cannot be issued for the appearance of a person accused of an offence for which the punishment does not exceed six months' imprisonment, the trial of which is regulated by Chapter XV. Calcutta High Court, Muddun Mohun Poddar, June 24th, 1865.

Attachment of the property of absconding party.

184. The Magistrate may, at the same time, order the attachment of any moveable* or immoveable property belonging to the person absconding or concealing himself. Such order shall not authorize the attachment of any property out of the jurisdiction of the Magistrate by whom it is made, but it shall authorize the attachment of property in the jurisdiction of any Magistrate by whom such order is endorsed. The attachment under this Section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases by seizure under the order of the Magistrate or by the appointment of a manager and receiver, or by an order prohibiting the payment of rent to the absent person, as the Magistrate shall deem proper. If the absent person shall not appear within the time specified in the proclamation, the property under attachment shall be declared to be at the disposal of Government, but shall not be sold until the expiration of six calendar months, unless such property is of a perishable nature, or it shall be considered by the Magistrate that the sale would be for the benefit of the owner.

* s. 6.

It would appear that a Magistrate who originally issued the warrant can order the attachment of only such property of the party absconding or concealing himself as is found within his jurisdiction. There is, however, apparently no prohibition against the attachment of property in another jurisdiction, provided that the consent of the Magistrate of that jurisdiction have been obtained. The proper course would probably be to send the order of attachment to that Magistrate, with a requisition

for his endorsement thereon to give it due authority in that foreign jurisdiction.

Before proceeding to declare property under attachment to be at the disposal of Government, the Magistrate should take evidence that the formalities for the issue of a proclamation have been duly observed. Calcutta High Court, Muddun Mohun Poddar, June 24th, 1865.

The party, if present, should be called upon to show cause against the confiscation of his property. The Magistrate's proceedings were annulled as illegal because he omitted to comply with this form. *Id.* Jhundoo Singh, January 15th, 1866.

The following rule has been issued to Collectors by the Revenue Board of Bengal.

"Property thus under attachment is to be declared at the disposal of Government, if the absent person does not appear within the time (limited to 30 days) specified in the proclamation issued under Section 183 at the same time as the attachment. But such property is not to be sold until the expiration of six calendar months. It is incumbent on the Collector to take care that the right of Government to such land is declared on the expiration of the period mentioned in the proclamation, and to obtain an order from the Magistrate for the sale of the property at the expiration of the six months herein referred to."

"The law does not restrict the Collector to any particular mode of management during the period that such lands are under attachment and before sale: ordinarily, however, the provisions of Reg. V. of 1827 should be applied." Miscellaneous Rules, p. 5.

Restoration of property declared to be forfeited.

185. When any person whose property shall have been declared to be at the disposal of Government under the last preceding Section shall, within two years after the attachment of the property, surrender himself, and shall, upon trial before a competent Court, prove to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of evading justice, such property, or if the same shall have been sold, the proceeds thereof, shall be restored to him.

An arrest does not amount to a surrender. Agra Sudder Court, June 28th, 1863.

Summons to a witness to attend and give evidence.

186. The Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall issue his summons to such persons, requiring them to appear at a time and place mentioned in the summons before such Magistrate to testify what they know concerning the complaint made against the accused person.

Form of summons to the witness, and mode of service thereof.

187. Every summons issued by a Magistrate* under the last preceding Section, shall be served personally on the witness; or, if the witness be not found, may be left for him with some adult male member of his family residing with him.

* s 15.

A similar mode of service is prescribed by Section 71 in the case of an accused person. By Section 72, provision is made for a case in which there may be no adult male member of the family of the accused person on whom service can be made. There is no such provision specially made in this Chapter, and it is doubtful whether Section 72 would apply, as Section 75 declares that "the provisions relating to a summons and its *issue* contained in this Chapter" [*i. e.* Chapter IV. in which Section 72 stands], shall be applicable "to every summons issued under this Act," but does not refer specially to the rules regarding the *service*

In what cases warrant in the first instance.

188. If the Magistrate shall see reason to believe that such witness will not attend to give evidence without being compelled to do so, it shall be lawful for such Magistrate, instead of issuing a summons, to issue his warrant in the first instance.

Witnesses arrested under a warrant and brought before a Magistrate should not be treated as criminals, and put in irons; they should be simply treated as persons arrested on civil process. Calcutta High Court, 21, 1864.

If warrant cannot be served

189. If the warrant cannot be served, and the Magistrate is satisfied that the witness absconds or conceals himself for the purpose of avoiding the service thereof, the Magistrate may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode, and if such witness shall not attend at the time and place named in such proclamation, the Magistrate may order the attachment of any moveable property* belonging to such witness to such amount as he shall deem reasonable, not being in excess of the amount of costs of attachment and of any fine to which such witness may be liable under the provisions of the following Section. Such order shall not authorize the attachment of any property out of the jurisdiction of the Magistrate by whom it is made, but it shall authorize the attachment of property in the jurisdiction of any Magistrate by whom such order is endorsed.

* s 6.

If on attachment witness appear and satisfy Magistrate, his property to be released from attachment.

190. If the witness shall appear and satisfy the Magistrate that he did not abscond or conceal himself for the purpose of avoiding the service of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as he shall deem fit. If such witness shall not appear, or appearing, shall fail to satisfy the Magistrate that he did abscond or conceal himself for the purpose of avoiding the service of the warrant, and that he had not such notice of the proclamation as aforesaid, it shall be lawful for the Magistrate to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Magistrate may impose upon such witness under the provisions of Section 172 of the Indian Penal Code. If the witness shall pay to the Magistrate the costs and fine as aforesaid, the Magistrate shall order the property to be released from attachment.

If he do not appear or satisfy Magistrate, property to be sold.

The difference between the penalties to which an accused person and a witness are respectively liable on their absconding or concealing themselves is marked. In the former case, the term to be specified in the proclamation is not to be less than 30 days: in the latter, it is left to the discretion of the Magistrate. In the former, attachment of *moveable and immoveable* property may be ordered simultaneously with the proclamation: in the latter, non-compliance with the proclamation must have occurred before the Magistrate can order the attachment of the *moveable* property. In the one case, the entire property may be attached. in the other, the attachment is confined not only to the moveable property, but the amount must be "reasonable," and must not exceed the amount of costs of attachment, and of any fine to which the witness may be liable under Section 172, Penal Code, *i. e.* 1000 Rupees. The sale of the attached property in the case of an accused person, cannot *ordinarily* take place until the expiration of six calendar months, but in the case of a witness it can take place as soon as, on his appearance, he has failed to explain satisfactorily the cause of his absence, or, on his non-appearance, on the date fixed for the determination of the matter.

A Magistrate fined a witness who failed to appear after proclamation and attachment of his property The Sessions Judge, on appeal, reversed the order, on the ground that the appellant's answer to the charge should have been recorded, and that, not being so recorded, the fine was illegal. The Calcutta High Court declared that the Judge had taken a mistaken view of the law, for taking a witness's answer supposes that the man

has made his appearance, whereas, as in the present case, if he did not come in, and his defence could not be recorded, he would escape punishment. Rhedoy Nath Biswas, March 15th, 1865.

If he do not obey summons, then warrant.

191. If any person summoned to give evidence, shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, it shall be lawful for the Magistrate,* upon proof of the summons having been duly served, to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid.

* S. 15.

Witnesses arrested under warrant and brought before a Magistrate, should not be treated as criminals and put into irons: they should be treated simply as persons arrested on civil process. Calcutta High Court, Cir. 21, 1864.

Refusing to answer, may be committed to custody.

192. If any person summoned or brought before a Magistrate, shall refuse to answer such questions as shall be put to him, without offering any just excuse for such refusal, the Magistrate may, by warrant, under his hand and seal, commit the person refusing, to custody for any term not exceeding seven days, unless he shall, in the meantime, consent to be examined and to answer, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Section 163 of this Act.

By Section 32, Act II. of 1855 it is enacted that "a witness shall not be excused from answering any question relevant to the matter at issue in any suit or in any Civil or Criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind. Provided that no answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any criminal proceeding"

The offence committed by a witness in refusing to answer a question, is punishable under Section 179, Penal Code, and the procedure to be followed, is laid down in Section 163, Code of Criminal Procedure.

Examination of the complainant and witnesses for the prosecution.

193. The Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

CH. XII. ss. 194 & 195.

To be in the presence of the accused who may cross-examine.

194. The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his Agent* when his personal attendance is dispensed with and he appears by Agent. The accused or his Agent shall be permitted to cross-examine the complainant and his witnesses.

* S. 182.

S. 432 declares that "every person charged before any criminal Court with an offence may of right be defended by counsel or authorized agent." This has however been qualified by Act XX. of 1865, S. 40, which requires "the permission of the presiding Judge or Magistrate," if the authorized agent be not a Pleader or Mookhtear duly qualified under that act; and it further declares that "no person so appearing, pleading, acting, or assisting, shall be entitled to recover any fee or reward therefor."

The Calcutta High Court [Cir. 19, 1864] have ordered that there shall be entered in the examination of complainants and witnesses, the name of the person examined, and of his or her father, and if she be a married woman, that of her husband, the religion, caste, profession and age of the deponent, and the village and pergunnah in which he or she resides.

The examination of witnesses should invariably be conducted in the presence of the accused person. The evidence of witnesses in another trial is not evidence against a person charged with the same offence who has been subsequently apprehended. Calcutta High Court, Kasee Roy, January 27th, 1863.

There is one exception to this rule. Section 371 declares that the declaration "of a deceased person, *whether it be made in the presence of the accused person or not*, may be given in evidence, if the deceased person at the time of making such declaration believed himself to be in danger of approaching death, although he entertained at the time of making it hopes of recovery." Under Section 370, the report of the Chemical Examiner to Government is evidence upon any matter or thing submitted to him for examination or analysis and report.

The Madras Sudder Court has held that, though depositions need not be signed by the deponents, it is expedient that their signatures should be taken to the vernacular record.

Mode and language in which the evidence is to be recorded.

195. The evidence of each witness shall be taken down in writing in the language in ordinary use in the District† in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate, and shall be signed by the Magistrate. When the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the District† in which the Court is held, shall form part of the record. In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the examination of each witness proceeds,

† S. 18.

to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall be annexed to the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

A Sessions Judge [and Magistrate] is bound to take a memorandum of the deposition of each witness as the examination proceeds. this is not complied with by a mere statement that a witness deposes the same as the last. 1, Bombay, 92.

The term "witness" evidently includes a complainant: Calcutta High Court, 156, 1865.

Local Government may direct the evidence to be recorded in the vernacular language of the Magistrate.

196. It shall be competent to the local Government to direct that in any District* or part of a District to which this Act shall extend, or shall hereafter be extended under the provisions of Section 445 of this Act, the evidence of witnesses shall be taken down by the Magistrate with his own hand in the vernacular language of the Magistrate, unless the Magistrate be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court. The evidence so taken down shall be signed by the Magistrate, and form part of the record. Provided that, if the vernacular language of the Magistrate be not English or the language in ordinary use in the District* in which the Court is held, the Magistrate may be directed by the local Government to take down the evidence in the English language or in the language in ordinary use in the District* in which the Court is held, instead of his own vernacular.

* s 18.

Proviso.

On 30th June, 1864, the Government of Bengal issued an order under Section 196 for the record of evidence in all cases in Magistrates' Courts; and on August 6th, 1865, the same practice was introduced in all Courts of Session.

In the Presidency of Madras these provisions have not been so generally extended. It has been extended to all classes of Magistrates in the districts of Nellore, Cuddalore, and Cuddapah, and apparently only in special cases of particular and qualified officers in other districts. The system has also been introduced in the Sessions Courts of Chingleput, and Chittore.

In the Presidency of Bombay and in the North Western Provinces, the local Governments do not appear to have exercised the powers vested in them by Section 196.

CH. XII
Ss 197&198.

The term "witnesses" in Section 196, includes complainants. Calcutta High Court, 156, 1865.

The examination of an accused should invariably be recorded in the language it is delivered. *Id* 651, 1865

In depositions in which there may be any doubt as to the exact meaning of any expression used, and in which the doubtful expression has an important bearing on the offence of which a prisoner is charged, the Calcutta High Court [Cir 9, 1865] suggested the expediency of transcribing, in Roman characters, the words actually used, in order that the Court may be in a position, on the matter coming before it, without fear of error, to determine on their exact signification, and, in consequence to give them their due and proper weight Should an instance occur in which a foreign language is used, or in which the evidence may be delivered in a dialect to which the Judge may be unaccustomed, an Interpreter should be employed, in the manner prescribed by Section 431, Code of Criminal Procedure.

Local Government to decide what is the language in ordinary use in any District.

* S 18.

197. If any question shall arise as to what is the language in ordinary use in any District* in which a Court is held, that question shall, for the purposes of this Act, be determined by the local Government.

How the evidence is to be recorded.

† S 182.

198. The evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative, It shall be in the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any person who is a prosecutor, or a person accused, or his Counsel or Agent,† shall require it. When the evidence is completed, it shall be read over to the witness in the presence of the accused person if in attendance, or of his Agent† when his personal attendance is dispensed with and he appears by Agent,† and shall, if necessary, be corrected. If the witness shall deny the correctness of any part of the evidence when the same is read over to him, the Magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he may think necessary. If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

See note to S. 195.

Memorandum to be attached to the evidence.

199. A memorandum to be signed by the Magistrate shall be attached to the evidence of each witness, and shall state that the evidence was read over to the witness in a language which he understood (naming the language), and if the fact is so, that the witness acknowledged such evidence to be correct. When the evidence is not taken down by the Magistrate with his own hand, the memorandum shall further state that the evidence was taken down in the presence and hearing of the Magistrate, and under his personal direction and superintendence.

The provisions of Section 199 apply no doubt to all witnesses, whether for the prosecution or defence. Madras High Court, 1864.

In what cases evidence to be interpreted to the accused or his Agent.

200. If the evidence is given in a language not understood by the accused person, it shall be interpreted to him in open Court in a language understood by him, in all cases where the accused is present in person. If the accused person appears by Agent,* and the evidence is given in a language other than the language in ordinary use in the District† in which the Court is held, it shall be interpreted to such Agent* in that language.

* s 182.

† s. 18.

Section 431 declares that, "when the services of an Interpreter are required by any Criminal Court for the interpretation of any evidence or statement, such Interpreter shall be sworn, in the manner provided for witnesses by any law for the time being in force, to interpret truly such evidence or statement, and such Interpreter shall be bound to state the truth in his interpretation of such evidence or statement."

Section 195 enacts that, "when the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the District in which the Court is held shall form part of the record."

Power of Magistrate at any stage to summon and examine any person.

201. It shall be in the discretion of the Magistrate at any stage of the proceedings to summon and examine any person, whose evidence he may consider essential to the enquiry.

The Calcutta High Court in its original Criminal Jurisdiction (Phear, *J.*), in the trial of a European British subject, refused to admit as evidence his answers to interrogations put to him by a Magistrate and Justice of the Peace in the Mofussil during the enquiry preliminary to commitment, on the ground that it did not appear that he had been duly warned before examination. Sessions for April, 1865.

The English law regarding the form to be observed in warning a prisoner is contained in 11 and 12 Vic. ch. 42, s. 18. See Appendix B.

Examination of defendant.

202. It shall be in the discretion of the Magistrate, from time to time, at any stage of the enquiry, to examine the accused person, and to put such questions to him as he may consider necessary. It shall be in the option of the accused person to answer such questions.

For the rule regarding the examination of a European British subject, see note to S. 201.

The following are the terms of a Circular, 13, 1864, issued by the Calcutta High Court to the Magistrates subordinate to it.

"Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person at any stage of the enquiry, before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the enquiry. In those few and exceptional cases in which the guilt of an accused may be beyond reasonable doubt, the practice in force may be permitted without risk; but, inasmuch as by Section 225 it is discretionary with a Magistrate to commit, or to discharge, an accused person, according as he finds that the evidence is, in his opinion, sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give, when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation; it being clearly explained to the accused that it is at his option to answer such questions or not. The Court, however, desire to explain that, in issuing these directions, they in no way sanction any proceedings of an inquisitorial nature."

Under no circumstance should a party accused of an offence, being at the time of unsound mind and incapable of making his defence, be examined by a Magistrate. *Id* Cir. 14, 1864.

The same Court [Cir. 19, 1864] has ordered that the examination of an accused shall contain his or her name, that of his or her father, and, if a married woman, that of her husband, the religion, caste, profession and age of the accused person, and the village or pergunnah in which he or she resides.

The examination should not be recorded, until a complaint has been made. A criminal trial cannot properly be commenced by such examination [*Id.* 627, 1863]; but an admission of crime, fairly made, and after due warning, is not inadmissible, because at the time it was made, no formal accusation had been made against the party making it. [*Id* Ramchurn Chamar and others, September 12th, 1865.] The Judicial Commissioner, Punjaub, has ruled that an accused person making false, irrelevant, and defamatory assertions in his defence, may be prosecuted in the Criminal or sued in the Civil Court on account of the same.

No influence to be used to induce disclosures.

Magistrate how to proceed in case of confession.

203. No influence, by means of any promise or threat or otherwise, shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge; but if the accused person shall, of his own accord, propose

to confess the commission by him of the offence of which he is accused, the Magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon in the same manner as if he were a witness.

Accused person not to be sworn.

204. No oath or affirmation shall be administered to the accused person.

Examination of the accused how to be recorded.

205. The examination of the accused person, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

The examination of an accused person should be recorded in the language in which it is delivered, notwithstanding that the Local Government may, under Section 196, have ordered that the evidence shall be recorded in English. [Calcutta High Court, 651, 1865.] It shall also contain the name of the person examined, that of his or her father, and, if a married woman, that of her husband, the religion, caste, profession and age of the person examined, and the village or pergunnah in which he or she resides. *Id.* Cir. 19, 1864.

Any person attending may be detained for any offence committed by him.

206. Any person attending the Court of the Magistrate, although not upon an arrest or summons on a charge made, may be detained by the Magistrate for the purpose of examination, for any offence which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a charge made.

By Section 81 "a Magistrate may at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant."

Discretionary with the Magistrate to call for evidence for the defence.

207. It shall be at the discretion of the Magistrate to summon any witness who may be offered in behalf of the accused person to answer or disprove the evidence against him.

See note to S. 202 regarding a Circular Order of the Calcutta High Court on this point.

CH XII. ss. 208–210.

Witnesses for the defence.

208. The provisions of Sections 187, 188, 189, 190, 191, and 192, of this Act, shall be applicable to witnesses named in support of the defence.

Magistrate may tender a pardon in certain cases.

* Ss. 14. 18.

† S. 16.

‡ S. 13.

209. It shall be lawful for the Magistrate* of the District or other Officer exercising the powers of a Magistrate,† recording his reason for so doing, to tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to any offence specified, in Column 7 of the Schedule annexed to this Act, as triable by the Court of Session,‡ on condition of his or their making a full, true, and fair disclosure of the whole of the circumstances within his or their knowledge relative to the crime committed, and every other person concerned in the perpetration thereof. If any person shall accept a tender of pardon under this Section, he shall be examined as a witness in the case under the rules applicable to the examination of witnesses. Such person, if not on bail, may, if the Magistrate or other Officer as aforesaid shall think proper, be detained in custody pending the termination of the trial.

The law requires that a Magistrate should record his reasons for tendering a conditional pardon. Calcutta High Court, 687, 1865.

A conditional pardon can only be tendered in cases triable by a Court of Session. If a case be regarding an offence triable by a Magistrate or the Court of Session, the *intention* of the Magistrate to commit it to the Court of Session is the test for determining whether a conditional pardon can be granted or not. A Magistrate cannot tender a pardon in any case which he intends to dispose of himself. [*Id.* 323, May 5th, 1862.] A Sub-Magistrate empowered under Section 38 to make commitments can offer a conditional pardon. [*Id.* 785, 1863.] If any person to whom a tender of pardon has been made upon certain conditions, does not act up to those conditions, the offer is null and void, and he may be committed for trial. If the failure to fulfil the conditions occurs after the offer of pardon has been accepted, and the person examined as a witness, the Court of Session can order his commitment; but if the failure is before the case goes out of the Magistrate's hands, that officer is competent to deal with him. *Id.* 535, 1863.

The same Court, by a Full Bench, held that the proviso to Section 28, Act II. of 1855, applied to Mofussil Courts, and that corroborative evidence was necessary in support of the testimony of a single witness in the case of perjury [Lal Chand Kowrah, February 7th, 1866], and also in support of the testimony of one or more accomplices [Dwarka, January 25th, 1866.]

When Sudder Court or Court of Session may direct a tender of pardon.

§ S. 13.

210. It shall be competent to a Court of Session§ at the time of trial, and also to the Sudder Court as a Court of re-

ference,* in cases tried with the aid of Assessors, to instruct the Magistrate in like manner to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to any such offence, with the view of obtaining his or their evidence on the trial.

* Ch. 28.

When Sudder Court or Court of Session may direct the commitment of a person to whom a pardon may have been tendered.

211. If it shall appear to a Court of Session† at the time of trial, or to the Sudder Court‡ as a Court of reference,§ that any person who shall have accepted an offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information, it shall be competent to such Court to direct the commitment of such person for trial for the offence in respect of which the pardon was tendered.

† S. 13.
‡ S. 19.
§ See Ch. 28.

A Sessions Judge should not forthwith convict a person who has accepted a conditional pardon, and has failed to conform to these conditions, as the law requires him "to direct the commitment of such person for trial." As it did not appear that the accused had been prejudiced in his trial by this informality, the Calcutta High Court did not interfere as a Court of revision. 916, 1865.

Bail not to be taken for certain offences.

212. When any person shall appear to be brought before a Magistrate‖ accused of any offence entered as not bailable in Column 5 of the Schedule annexed to this Act, such person shall not be admitted to bail, if there appear reasonable grounds for believing that he has been guilty of the crime imputed to him; but if the evidence given in support of the accusation shall, in the opinion of the Magistrate, not be such as to raise a strong presumption of the guilt of the accused person and to require his committal, or such evidence shall be adduced on behalf of the accused person as shall, in the opinion of the Magistrate, weaken the presumption of his guilt, but there shall appear to the Magistrate in either of such cases to be sufficient ground for further enquiry into his guilt, the accused person shall be admitted to bail pending such enquiry.

‖ S. 15.

When may be taken.

"When any person is required by any Criminal Court to give bail, it shall be lawful to such Court to permit such person to deposit a sum of money or Government Promissory Notes to such amount as such Court may fix in lieu of such bail." Section 437.

CH. XII. SS. 213-217.

When bail shall be taken.

* S. 15.

213. When any person shall appear or be brought before a Magistrate* accused of any of the offences specified in Column 5 of the Schedule annexed to this Act, as bailable, he shall be admitted to bail.

See S. 437 quoted in note to S. 212.

The Calcutta High Court [Cir. 15, 1864] deprecated the employment of the Police in enquiries as to the sufficiency, or otherwise, of the security offered, as such enquiries tended to prolong the detention in jail of the accused person offering the security. The Court stated that it is the duty of a Magistrate to satisfy himself that the sureties are, in point of substance, persons of whom it may reasonably be presumed, that they can, if necessary, satisfy the terms of the bail bond.

Recognizance of accused and sureties.

† S. 15.

‡ S. 13.

214. When a Magistrate† shall admit to bail any person accused or suspected of any offence, a recognizance in such sum of money as the Magistrate† may think sufficient, shall be entered into by the person so accused and one or more sureties, conditioned that such person shall attend during the preliminary enquiry, and if required, shall appear when called upon at the Court of Session‡ to answer the charge.

Insufficient bail.

§ S. 15.

215. If through mistake or fraud insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused person may be ordered by the Magistrate§ to find sufficient sureties, and, in default, may be committed to prison.

See note to S. 212.

Bail may be taken at any time before conviction.

216. If the accused person cannot find sureties when called upon, he shall be admitted to bail upon finding the same at any time afterwards before conviction.

See note to S. 212.

Discharge on bail.

‖ S. 15.

217. After the recognizances shall have been duly entered into, the Magistrate,‖ in case the accused person shall have appeared voluntarily, or shall be in the custody of some Officer, shall thereupon discharge him; and in case he shall be in some prison or other place of confinement, shall issue a warrant of discharge to the jailor or other person having him in his custody, and such jailor or other person shall thereupon liberate him.

218. The sureties for an accused person may, at any time, apply to the Magistrate to be discharged from their engagements. On such an application being made, the Magistrate shall issue his warrant, directing that such person be brought before him. On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and, in default, may order him to be committed to prison.

Discharge of sureties.

219. Whenever, by reason of default of appearance of the person executing the personal recognizance, the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty by the attachment and sale of the moveable property* belonging to such person, which may be found within the jurisdiction of the Magistrate of the District.†

Proceedings to compel payment of penalty by accused.

* S. 6.

† Ss. 14, 18.

The Bombay High Court has held that a Magistrate has no power to forfeit only a portion of the recognizances entered into, and that such can be remitted only by Government [1, Bombay, 138]; but the Calcutta High Court [644, 1864] has held the contrary, on the principle that since the greater contains the less, if a Criminal Court can realize the whole, it can also realize a portion.

220. Whenever, by reason of default of appearance by the person bailed, the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid; and, if no sufficient cause be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties by the attachment and sale of any moveable‡ property belonging to such surety or sureties which may be found within the jurisdiction of the Magistrate of the District,§ and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the Civil jail, during a period not exceeding six months.

Proceedings to compel payment of penalty by sureties.

‡ S. 6.

§ Ss. 14, 18.

In what cases the powers given by the last two Sections may be exercised.

221. The powers given by the last two preceding Sections may be exercised by every Criminal Court* in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court according to the conditions of such recognizance or bail.

* S. 11

Warrant of commitment how to be directed, &c.

222. Every warrant for the commitment of a person to custody shall be directed to some jailor, or other Officer or person having authority to receive and keep prisoners, and shall be in the form (C) given in the Appendix, or to the like effect.

With whom to be lodged.

223. The warrant of commitment shall be lodged with the jailor, if he be in the jail; and if he be not in the jail, with his deputy. If the jailor has no deputy, the warrant may be lodged with any Officer of the jail then being in the jail.

When Magistrate may adjourn the enquiry.

224. If from the absence of a witness or from any other reasonable cause it shall become necessary or advisable to defer the examination, or further examination, of witnesses, it shall be lawful for the Magistrate by a written order, from time to time, to adjourn the enquiry, and to remand the accused person for such time as shall be deemed reasonable, not exceeding fifteen days; provided that, instead of detaining the accused person in custody during the period for which he shall be so remanded, the Magistrate may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before the Magistrate at the time and place appointed for the continuance of such examination.

See Ss 221, 219, 220, for the procedure regarding the enforcement of the penalties of a recognizance.

When the proceedings have been completed against an accused person, the decision of the case or his commitment to the Court of Session, should not be deferred merely because the principal offenders have not been apprehended. Calcutta High Court, 795, 1865.

When accused person to be discharged.

225. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial

before the Court of Session* or for remanding him, he shall discharge him, unless it shall appear to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under Chapter XIV of this Act.

CH XII. S 226.

* S 13.

The procedure to be followed in a case of the last mentioned description is to be found in Sections 250—255.

A Magistrate having thus discharged certain persons, the Sessions Judge, under Section 435, ordered their commitment The Calcutta High Court held that, to give effect to this order, it was not necessary for the Magistrate to commence proceedings *de novo*, but that he acted in a legal and regular manner in merely proceeding in accordance with Sections 226, 227, et seq.

An order of discharge under S 225 does not bar further proceedings being instituted by a Magistrate, as it cannot be regarded as an acquittal of an offence which such an officer had no jurisdiction to try. An acquittal supposes a trial, whereas an order passed under Section 225 would occur merely in a preliminary enquiry. Cal. High Court, 802, 1865

When defendant to be committed for trial.

226. When evidence has been given before a Magistrate† which appears to be sufficient for the conviction of the accused person of an offence which is triable exclusively by the Court of Session,‡ or which, in the opinion of the Magistrate,† is one that ought to be tried by the Court of Session,‡ the accused person shall be sent for trial by the Magistrate† before the Court of Session.‡ If the Magistrate† is a Justice of the Peace and the accused person is a European British subject, he shall be sent for trial before the Supreme Court of Judicature.§

† S. 15.

‡ S 13.

§ Now High Court in each Presidency town.

A Magistrate in his grounds of commitment should specify, with exactness and precision, the proof against each particular prisoner, and the manner in which it is supported. Calcutta High Court, Kodal Kahar, 15th Jan 1866

When several persons are charged with offences of various degrees arising out of the same act or transaction, *all* implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by the Court of Session, be chargeable against *any* of the accused. Agra Sudder Court, Cir. 14, 1862. Calcutta High Court, Cir., May 19th, 1862.

A Magistrate having committed a person who appeared before him by agent [Section 182], the Calcutta High Court (Hurnath Rai, March 21st, 1865) held that the commitment was not necessarily illegal, but as the agent had not been required to give in a list of the witnesses whom he wished to have summoned for his principal, the Court directed the Magistrate to make the demand

CH. XII. SS 227 & 228

Copy of charge to be furnished to accused person.

227. As soon as the charge on which the accused person is to be tried, has been prepared as hereinafter* directed, it shall be read to him, and a copy or translation of it shall be furnished to him, if he require it. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the Court of Session† or Supreme Court.‡ It shall be in the discretion of the Magistrate to allow the accused person to give in any further list of witnesses at a subsequent time. The Magistrate shall receive the list, and summon the witnesses to appear before the Court before which the accused person is to be tried. The provisions of Sections 187, 188, 189, 190, 191, and 192, so far as they relate to the attendance of witnesses, shall be applicable to witnesses named by the accused person in the list above mentioned.

* See Ss. 233–243.

Witnesses for the defence on the trial.

† S. 13.

‡ High Court in its extraordinary original criminal jurisdiction

Commitments, made to the High Courts [late Supreme Courts] by Magistrates referred to in the foregoing, would be only in cases in which the persons to be committed are European British subjects. See Sections 28-29-30, Act XIII. of 1865, Appendix B., pp 325-6, for the procedure after the commitment of a European British Subject for an offence not committed in a Presidency Town.

As the examination of an accused is recorded in the language in which it is delivered [Section 205], the copy or translation of the charge which he is entitled to receive, should be in the same language. Calcutta High Court, February 3rd, 1864. When the charge on which the accused is to be tried has been prepared and read to him, the facts on which he is charged, and to which he has to answer, should, at the same time, be specifically explained to him. Agra Sudder Court, Cir. 1, 1863.

Magistrate may refuse to summon unnecessary witness, unless a deposit be made to defray the expenses of such witness

228. If the Magistrate shall be of opinion that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material, and if the Magistrate be not so satisfied, he shall not be bound to summon the witness, unless such a sum shall be deposited with the Magistrate as he shall consider necessary to defray the expense of obtaining the attendance of the witness.

Ordinarily a Magistrate is bound to summon witnesses cited by a person committed for trial to the Court of Session. He can refuse to do so only in the exceptional cases mentioned in Section 228. 3, Agra, 36.

Record to be forwarded to the Superior Court.

229. When a commitment is made to the Court of Session,* the record of the Magistrate shall be forwarded to such Court, together with any weapon or other article of property connected with the case. When a commitment is made to the Supreme Court of Judicature,† such record and such weapon or other article shall be forwarded to the Clerk of the Crown, and if any part of such record shall not be in the English language, a translation thereof in the English language shall be forwarded therewith.

* S. 13.

† High Court in its extraordinary original criminal jurisdiction.

The Calcutta High Court [Cir. February 22nd, 1862] has declared that it is necessary that commiting officers should submit a calendar in Sessions trials, and should record the grounds of commitment, notwithstanding that the Code of Criminal Procedure is silent on these points. The Magistrate of the District cannot revise a commitment made by another Magistrate. Agra Sudder Court, Cir. 17, 1864.

The following provision of Act XIII. of 1865, S. 3, should receive the attention of all Magistrates committing persons for trial before a High Court.

"Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person for trial before the High Court for an offence committed, or which, according to law, may be dealt with as if it had been committed within the local limits of its ordinary original Civil Jurisdiction, shall, together with all examinations, informations, bailments, and recognizances, now required to be delivered to such Court before the trial, deliver to the Clerk of the Crown a written instrument of charge signed by him, stating for what offence such person is so committed or held to bail."

For further rules regarding the Procedure in the case of European British subjects charged with the commission of criminal offences, see Appendix B.

Copies of depositions to be furnished to accused.

230. When the preliminary enquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions, which shall be made at his expense.

Copies of depositions furnished to an accused person, should be written on unstamped paper, and authenticated by the presiding Judicial officer. Madras High Court.

Act XIII. of 1865, S. 5, contains a provision for cases committed for trial before a High Court somewhat similar to S. 230, except that it fixes the maximum rate chargeable to the accused person at one anna for each folio of ninety words.

When commitment is made, Magistrate to give notice to Government Pleader, &c.

231. When the accused person is committed to take his trial before the Court of Session,‡ the Magistrate shall issue an order to the Government Pleader or other Officer appointed by the Government to

‡ S. 13.

CH. XII. S. 231.

* S. 13.

conduct prosecutions before the Court* of Session, notifying such commitment, and stating the offence in the same form as the charge. Nothing in this Section shall preclude the Magistrate, if he shall think fit, from appointing a person other than such Government Pleader or Officer to conduct the prosecution.

If a Sessions Judge find that the proceedings, upon which a commitment is based, are altogether illegal, he should at once, under Section 434, represent the illegality to the High Court, who will be in a position to annul the whole proceedings including the commitment. Calcutta High Court, Cir. 7, 1864.

The following are the rules for the conduct of criminal prosecutions in the Presidency of Bengal. They also define the relations between a Magistrate and the Remembrancer of Legal Affairs.

RULE I.

When legal advice may be sought.

A Magistrate may take the opinion of the Legal Remembrancer on any point within the scope of Rule VIII.

RULE II.

Procedure when information is received of any appeal, &c., to the High Court.

Whenever a Magistrate shall be informed that any Criminal case has been or is about to be transmitted to the High Court, in appeal or revision or on reference, he shall at once communicate with the Legal Remembrancer, giving him a brief abstract of the case, and submitting his opinion as to whether or not there should be any appearance for the prosecution.

RULE III.

Duties in fowarding information, &c.

The Magistrate is bound to furnish the Legal Remembrancer with any information or explanations called for with reference to Criminal cases pending before the High Court.

RULE IV.

Employment of a prosecutor in Criminal cases.

1. The Magistrate is empowered to employ the Government Pleader or any other Pleader of the Judge's Court or any one of his own Omlah in the prosecution of Criminal cases committed to the Sessions. The principle of selection should be, thorough knowledge of the case by attendance on it from its preliminary proceedings to its committal, trustworthiness, knowledge of law and procedure, skill and practice in the conduct of cases, and leisure to attend to the conduct of the case with reference to other avocations. The person selected should combine as many of the most important of the above qualifications as is possible.

Payment of a prosecutor in Criminal cases.

2. Whoever may be the person employed by the Magistrate to conduct the prosecution, he shall be entitled to a special fee. Such fee shall be regulated in amount by the time and labour bestowed on the case, by the issue of the case so far as it depended on the exertions of the prosecutor, and by a fee in proportion to his position and gains generally.

Form and submission of Bill of Fees.

3. The Magistrate shall submit a bill of fees granted for the above purposes, for the sanction and countersignature of the Legal Remembrancer. The bill shall be in form A, and the column of remarks shall state, in any particular case, whether the prosecutor has well or ill conducted it.

RULE V.

Duties of Government Pleader in Criminal Cases.

Government Pleaders to give information of Criminal cases sent in appeal or revision or referred to the High Court.

Whenever in any Criminal case the prisoner himself or some person on his behalf shall apply to the Sessions Court to appeal to the High Court, or whenever the High Court shall send for any record in order to an appeal or revision, or whenever the Sessions Court shall refer any Criminal case to the High Court for decision, the Government Pleader in the District Court shall at once give information to the Magistrate and to the Legal Remembrancer.

RULE VI.

Procedure by Government Pleaders in the High Court in Criminal cases referred, appealed, or revised.

Whenever a Government Pleader in the High Court shall receive notice that the record of any Criminal case has been received in or has been sent for by the High Court for the hearing of any reference, appeal, or revision of the same, he shall at once give notice to the Magistrate, requesting to be favored with any special instructions for the conduct of the case, and shall communicate with the Government Advocate on any points that seem specially to require it.

Duties of the Legal Remembrancer as Government Advocate.

RULE VII.

Government Advocate ex-officio a Pleader in the High Court.

Under the title of Government Advocate, the Legal Remembrancer is ex-officio a Pleader in the Appellate side of the High Court as well on the Criminal as on the Civil side.

RULE VIII.

Duties of the Legal Remembrancer as Legal Adviser

The Legal Remembrancer in his capacity as Government Advocate is the Legal Adviser of all officers subordinate to the local Government of Bengal who may require his opinion on points of Law, arising out of the performance as well of their ministerial as of their judicial functions.

Criminal Prosecutions.

RULE IX.

Conduct of Criminal Prosecutions.

In all Criminal cases before the High Court, whether in appeal or on revision or on reference, the Government Advocate has ordinarily a discretion to appear for the prosecution, either personally, or by one of the Pleaders subordinate to him.

Where the Prisoner employs Counsel.

2. Whenever in any such Criminal cases the prisoners are represented by Counsel, the Government Advocate shall appear for the prosecution, either in person, or by one of the Pleaders subordinate to him, at his discretion.

Where the Court calls for an appearance.

3. Whenever the High Court may think it conducive to the better administration of justice, they may call upon the Government Advocate to prosecute in any Criminal case before them, and the Government Advocate shall thereupon appear in such case in person, or by one of the Pleaders subordinate to him, at his discretion.

Where the Government Advocate differs from local officers.

4. The Government Advocate has a discretion to appear or not to appear in the prosecution of any Criminal case before the High Court, and this notwith-

standing any opinion, adverse to that he has himself formed, that may have been expressed by the officers submitting the case to him.

A.

No. and date of Calendar.	Name of Parties.	Number of Defendants.	Crime.	Name and designation of Officer who conducted the prosecution at the Sessions.	Whether the prisoner confessed.	Number of witnesses for the prosecution examined at the Sessions.	Number of witnesses for the defence examined at the Sessions.	Number of days the case was in course of trial at the Sessions Court.	Whether prisoner was acquitted or convicted by the Sessions Judge.	Amount of proposed remuneration.			REMARKS.

Recognizances of prosecutors and witnesses.

* s. 13.

232. Prosecutors and witnesses for the prosecution, whose attendance may be necessary before the Court of Session,* shall execute before the Magistrate recognizances in the Form (E) given in the Appendix, or to the like effect, to be in attendance when called upon at the Court of Session,* to prosecute or to give evidence, as the case may be. If any prosecutor or witness shall refuse to attend before the Court of Session* or to execute the recognizance above directed, it shall be competent to the Magistrate* to detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the time when his attendance at the Court of Session* is required, when the Magistrate shall forward such prosecutor or witness under custody to the Court of Session.*

For the procedure regarding the enforcement of the penalties on this recognizance, see Sections 219, 220, 221.

CHAPTER XIII. Ss. 233—247.

OF THE CHARGE.

The following contains a résumé of all the principal orders of the Calcutta High Court regarding the mode in which charges should be drawn up and the law on the subject.

A charge is necessary in all criminal trials, except those conducted under Chapter XV. of the Code of Criminal Procedure, and in summary convictions under the first part of Section 163 of the same Code.

A charge should follow as much as possible the form prescribed in Section 239. It should describe the imputed offence as nearly as possible in the language of the Indian Penal Code or the special or local law, and should refer to the Section of the law, under which the offence is punishable.

If there be any special exception or exceptions in the Section of the Indian Penal Code, referred to in the charge as the Section under which the offence charged is punishable, the existence of such exception or exceptions should be distinctly denied in the body of the charge. The Sections containing such exceptions are the following: Sections 136, 323, 324, 325, 326. A mere denial of the existence of an exception is not sufficient. The exception should be fully set forth in the charge, as otherwise it cannot be intelligible to the person charged.

If there be any doubt as to the offence of which an accused person is guilty, or if he appear to have been guilty of more than one offence, every such offence should be charged in a separate head of the charge. Each head of a charge should be complete in itself. What are substantially the same offences, should not be repeatedly charged in slightly different forms entering into details regarding the weapon used &c. &c.; one count, charging each specific offence and describing it with a reasonable degree of certainty, will suffice.

The termination of a charge varies according to the nature of the case of the proceedings of which it forms a part.

If the case be a trial before a Magistrate under Chapter XIV. Criminal Procedure [Section 250], or a preliminary enquiry held by a Sessions Court [Section 172 Criminal Procedure], each head of the charge will terminate thus: "and he has hereby committed an offence punishable under Section of the Indian Penal Code (or any special or local law, quoting it) and within my cognizance."

The body of the charge should in such cases terminate thus: "and I hereby direct that the said A. B. be tried on the said charge."

If the case be a preliminary enquiry held by a Magistrate [Chapter XII. Criminal Procedure, Section 233], or by a Civil Court [Section 173], each head of the charge should terminate thus: "and he has hereby committed an offence punishable under Section of the Indian Penal Code [or any special or local law, quoting it], and within the cognizance of the Court of Session."

The body of the charge should in such cases terminate thus: "and I hereby direct that the said A B, be tried by the said Court on the said charge."

The great object to be borne in mind by an officer drawing up a charge is to render, as far as possible, intelligible to the accused person,

CH. XIII. — the offence with which he is charged, without entering unnecessarily into detail in describing it. This will be best attained by following the text of the Indian Penal Code (or the special or local law as the case may be), transposing the terms to suit the particular case When, however, there are in one Section of the law two distinct offences, e. g. Giving or fabricating false evidence [Section 193 Indian Penal Code], or Kidnapping or abducting [Section 366], or offering resistance, or illegal obstruction to lawful apprehension, or escaping from lawful custody [Section 224], these offences should be charged in separate heads of the charge.

As the law requires that the Section under which the offence charged is punishable should be referred to, when a Section is referred to which makes an act a punishable offence without prescribing any specific punishment, beyond stating that such offence shall receive the same punishment, as some other offence, it is necessary that both the Section referring to some other Section for the punishment awardable, and the Section so referred to, should be quoted in the charge. For instance, the "fraudulently or dishonestly using as genuine a document which a person knows to be a forged document," is made an offence by Section 471, Indian Penal Code, but that Section prescribes no specific punishment, merely declaring that a person committing this offence shall be punished in the same manner as if he forged such document Now the punishment for forgery depends upon the nature of the document forged, and therefore, in order to determine the precise punishment for the offence defined in Section 471, it will be necessary to refer to one of the following Sections: 465, 466, 467, 468, 469. Similarly, with regard to charges under Sections 195, 196, 197, 198, 199, 200, 511, of the Indian Penal Code.

As regards charges of abetment, of which there are different degrees, involving different punishments, it is necessary that the particular nature of the abetment should be stated, in order that the accused person may have a better opportunity of disproving it, and that the punishment may be the better determined. Thus, if an abetment under Section 109, Indian Penal Code, be charged, it should be stated that the act abetted was committed in consequence of the abetment of the accused person, and that there is no express provision in the Indian Penal Code for the punishment of such abetment. The charge should further refer to the Section by which the abetment is made punishable, and, if no specific punishment be therein mentioned, also to the Section containing the punishment for the act abetted [Sections 109, 110], or for the act committed [Sections 111, 113].

The abetment of not more than one offence should form one head of the charge. Abetments of different degrees should be charged in separate heads.

In some Sections of the Indian Penal Code, the offence is described by reference to some other Section—e. g. Section 250 relates to the delivery of a coin, with respect to which the offence described under Section 246 or Section 248 had been committed. A charge under Section 250, and Sections of this description, should contain a full explanation of the terms of the Sections thus referred to, as otherwise a charge will not be intelligible to the accused person Similarly, the particular statement upon which a charge of intentionally giving false evidence [Section 193 Penal Code] has proceeded, should be specified; also the offence with which one person has falsely accused another [Section 211]; also the common object, in prosecution of which an offence was committed by any member of an unlawful assembly, so as to make each member liable for that offence [Section 149]; and

What the charge is to contain.

233. When the Magistrate has determined to send the accused person before the Court of Session* for trial, he shall make a written† instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct the accused person to be tried by such Court of such charge. A copy of this instrument shall be forwarded with the record of the preliminary enquiry to the Court of Session* before which the accused person is to be tried, and a copy shall also be sent to the Public prosecutor or to the Officer appointed to conduct the prosecution.

* S 13

† S 10.

How the offence is to be described

234. The charge shall describe the imputed offence as nearly as possible in the language of the Indian Penal Code, and shall refer to the Section under which such offence is punishable.

Absence of General Exceptions under the Penal Code to be assumed.

235. It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the General Exceptions contained in Chapter IV.‡ of the Indian Penal Code, but every charge shall be understood to assume the absence of all such circumstances.

‡ S 76-106.

Evidence as to General Exception.

236. It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the accused person shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may then be given on the part of the prosecutor.

Special ground of exception from absence of circumstances not to be assumed.

237. When the Section referred to in the charge contains an exception not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the Section, without a distinct denial of the existence of such circumstances.

These exceptions occur in charges under Sections 136, 323, 324, 325, 326, of the Indian Penal Code.

CH XIII. s. 239. — The special exceptions should be separately recapitulated, and their existence should be distinctly denied seriatim. It is not sufficient generally to deny the existence of an exception. Calcutta High Court, Circular, March 11th, 1863.

Charge may contain one or more heads.

238. The charge may contain one or more heads.

Heads of charge.

239. When a charge contains one head only, the form shall be as follows, or to the same effect :

(*a.*) I, A [*name and Office of Magistrate, &c.,*] declare that there is hereby made against Z the charge—

On Section 121.

(*b.*) That he, on or about the day of at , waged war against the Queen, and that he has thereby committed an offence punishable under Section 121 of the Indian Penal Code, (*c*) and within the cognizance of the Court of Session.

(*d.*) And I hereby direct that Z be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

To be substituted for (*b*).

On Section 124.

(2.) That he, on or about the day of at , with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 161.

(3.) That he, being a public servant in the Department, directly accepted from [*state the name*] for another party [*state the name*] a gratification, other than legal remuneration, as a motive for his, the said Z's, forbearing to do an official act, and that he has thereby committed an offence punishable under Section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 304.

(4.) That he, on or about the day of at , committed culpable homicide not amounting to murder, causing the death of , and that he has thereby committed an offence punishable under Section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

(5.) That he, on or about the day of at , abetted the commission of suicide by A.B., a person in a state of intoxication, and that he has thereby committed an offence punishable under Section 306 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 306.

(6.) That he, on or about the day of at , voluntarily caused grievous hurt to , and that he has thereby committed an offence punishable under Section 325 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 325.

(7.) That he, on or about the day of at , committed robbery, and that he has thereby committed an offence punishable under Section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 392.

(8.) That he, on or about the day of at , committed dacoity, and that he has thereby committed an offence punishable under Section 395 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Section 395.

And the same form shall be followed, as nearly as may be, in charges with one head only, under other Sections of the Indian Penal Code.

Charges in cases falling within two or more Sections of the Penal Code.

240. When it appears to the Magistrate that the facts which can be established in evidence show a case falling within two or more Sections of the Indian Penal Code, the charge shall contain two or more heads, each of which shall be applicable to one of such Sections.

Two or more offences punishable under the same Section.

241. When it appears to the Magistrate that the facts which can be established in evidence show the commission of two or more offences falling within the same Section of the Indian Penal Code, the charge shall contain two or more heads charging such offences respectively.

Thus a charge under Section 193, Penal Code, might be for intentionally giving or fabricating false evidence. If it be intended to charge a prisoner with both offences, they should be formed into two heads of the charge.

Cases of doubt as to the Section which is applicable, or the offence which may be proved.

242. When it appears to the Magistrate that the facts which can be established in evidence show a case falling within some one of two or more Sections

of the Indian Penal Code, but it is doubtful which of such Sections will be applicable, or show the commission of one of two or more offences falling within the same Section of the said Code, but it is doubtful which of such offences will be proved, the charge shall contain two or more heads, framed respectively under each of such Sections, or charging respectively each of such offences accordingly.

Thus, it may be doubtful in a case whether the evidence will convict the prisoner of murder or culpable homicide not amounting to murder, or robbery or dishonestly receiving stolen property. In each of these cases, the charge should contain two heads

Forms of charge of more than one head.

243. When a charge contains more heads than one, the form shall be as follows, or to the same effect :—

I, A [*name and office of Magistrate or other Officer as aforesaid, &c.,*] declare that there is hereby made against Z the charge :

On Sections 241 and 242.

First :—That he, on or about the day of at , knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine, and that he has thereby committed an offence punishable under Section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly :—That he, on or about the day of at , knowing a coin to be counterfeit, attempted to induce another person by name A. B. to receive it as genuine, and that he has thereby committed an offence punishable under Section 242 of the Indian Penal Code, and within the cognizance of the Court of Session.

And I hereby direct that Z be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

On Sections 302 and 304.

First :—That he, on or about the day of at , committed murder by causing the death of , and that he has thereby committed an offence punishable under Section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly :—That he, on or about the day of at , by causing the death of , committed culpable homicide, and that he has thereby committed an

offence punishable under Section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

On Sections 389 and 372.

First :—That he, on or about the day of at , committed theft, and that he has thereby committed an offence punishable under Section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly :—That he, on or about the day of at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly :—That he, on or about the day of at , committed theft, having made preparation for causing restraint to a person in order to the effecting of his escape after the committing of such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance at the Court of Session.

Fourthly :—That he, on or about the day of at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

And the same form shall be followed, as nearly as may be, in charges with more heads than one, under other Sections of the Indian Penal Code.

Amendment of charge.

244. It shall be competent to any Court before which a trial is held, at any stage of the trial, to amend or alter the charge.

"*Any Court.*" This would include not only a Court of Session, to which a commitment may have been made, but that of a Magistrate acting under Section 250.

Sessions Judges should not try persons on defective charges. They should rather exercise the power conferred on them by S. 244 and amend such charges. Calcutta High Court Circular, March 11th, 1863.

Whenever a Sessions Judge may see cause, under Section 244, to amend a charge, the reasons for such amendment, or, at all events, a statement that such has been found to be necessary, should form part of the record. 1, Agra, 67. If a charge be amended or altered by a Sessions Judge, the formalities prescribed by Section 362 should be

observed. 3 *Id.* 29. Until a trial before a Court of Session has been terminated by the delivery of the verdict by a Jury or Assessors, or before a Magistrate by the formal recording of the finding and sentence, even though all the evidence may have been taken, the power which a Court posseses under Section 244 Criminal Procedure, may be exercised. In all trials, however, any amendment or alteration of the charge will be subject to the due observance of Sections 245, 246 and 247. *Id.* Cir. 16, 1864.

When the trial may be immediately proceeded with after amendment.

245. If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making the amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

When a new trial may be ordered, or trial suspended.

246. If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and after hearing his defence, may further adjourn the trial, to admit of the appearance of any witness whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

Defendant may recall and examine witnesses already examined.

247. In all cases of amendment or alteration of a charge, the accused person shall be allowed to recall and examine any witness who may have been examined.

CHAPTER XIV. ss. 248—256.

Of Cases triable by the Magistrate in which a Warrant on Complaint may issue.

Cases in which Magistrate may issue a warrant.

248. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected to have committed, any offence triable by such Magistrate, and punishable under the Indian Penal Code with imprisonment for a period ex-

ceeding six months, it shall be lawful for such Magistrate to issue his warrant to apprehend such person.

Summons instead of warrant

Provided that in any such case the Magistrate, to whom such complaint shall be made, may, for any sufficient reason, instead of issuing his warrant in the first instance, issue his summons, requiring the person complained against to appear to answer to such complaint.

For the rules regarding the issue and service of a summons, see Sections 69—74 for those relating to the issue and execution of a warrant of arrest, see Sections 76—99

249. The provisions of Chapter XII relating to the issuing of process for causing the attendance* of the accused person, the taking of bail,† the summoning‡ and enforcing§ the attendance of witnesses, the examination‖ of parties and witnesses, the mode of recording¶ evidence, correction, attestation, and interpretation thereof, and the adjournment[1] of a case, shall be applicable to cases tried under this Chapter. On completing the examination of a witness under this Section, the Magistrate, in addition to the memorandum[2] required by Chapter XII., shall record such remarks as he may think material respecting the demeanor of any witness while under examination.

Issue of process, &c

* Ss 182—185, 201, 206
† Ss 181, 212, 213
‡ Ss 186, 187, 201
§ Ss 188—191,
‖ Ss 192 193, 202—205 208
¶ Ss 194—198.
1 S 224
2 S 195.

Sections 207, 227, 228 do not apply to trials before Magistrates Agra Sudder Court, Circular 25, 1865

250. When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate shall consider necessary, have been taken, the Magistrate, if he find that no offence has been proved against the accused person, shall discharge him. If the Magistrate find that an offence is apparently proved against the accused person which falls within the definition in a certain Section of the Indian Penal Code, or within one or other of the definitions in several Sections of the said Code, he shall prepare in writing a charge against the accused person in the manner prescribed in Chapter XIII[3] of this Act, all the provisions of which shall be applicable to charges prepared under this Section. In charges prepared under this Section the words "within my cognizance" shall be substituted for the words "within the cognizance of the

Charge

3 Ss 233—247

Court of Session" at the end of the charge, and the words "by the said Court" omitted in the order.

It is contrary to law to prepare a charge against a person when there is no evidence to support it. 3, Agra, 14.

The evidence of some witness was held to be necessary for the conviction of an offence tried under Chapter XIV., the Court (five Judges) holding that a complainant in such cases before a Magistrate was not regarded by the Code of Criminal Procedure as a witness, such as to make his evidence, without additional or concurrent testimony, legally sufficient under Act II. 1855, Section 28, for the conviction of the accused. The Court considered such a conviction to be erroneous in point of law and under Section 404 ordered the release of the person convicted by the Magistrate. 3, Agra, 40.

An accused person having been merely discharged, without being duly charged with an offence, the trial of which would fall under Chapter XIV. the Calcutta High Court [930, 1099, 1864, and 155 and 802, 1865] ruled that there had been no acquittal, and that the Magistrate of the District was fully competent to commence the case *de novo*. A similar ruling has been delivered by the Judicial Commissioner, Punjab. [4018, August 29th, 1862.] The Agra Court has held that when an offence, triable jointly by a Magistrate and by a Sessions Court, is tried by the former under Chapter XIV. Criminal Procedure, and, after the entire evidence for the prosecution and defence has been recorded, the Magistrate discharges the accused, holding that there is no proof to put him on his formal defence, another Magistrate cannot take up the case on the ground that the investigation has been defective. The Court held that the Magistrate's order, after enquiry, amounted to a verdict of not guilty. 4, Agra, 189.

A Magistrate was held to have acted improperly in dismissing a case tried under Chapter XIV. for default, because the prosecutor was absent. Such a course should be followed only in petty cases under Chapter XV. Section 259. Calcutta High Court, Jadoo Paharee, November 18th, 1864. The Madras High Court have adopted the same rule.

Plea.

251. The charge shall then be read to the accused person, and he shall be asked whether he is guilty or has any defence to make.

Plea of claim to be tried.

252. If the accused person have any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine the witnesses for the prosecution.

It will be well, in connection with this Section, to note Section 432, which declares "that every person charged before any Criminal Court with an offence may, of right, be defended by Counsel or authorized Agent."

This has, however, been qualified by Act XX. of 1865, Section 40, which requires "the permission of the presiding Judge or Magistrate" if the authorized agent be not a Pleader or Mookhtear duly qualified under that Act, and it further declares that "no person so appearing, pleading, acting, or assisting, shall be entitled to recover any fee or reward therefor."

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253. The Magistrate shall summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may, for this purpose, at his discretion, adjourn the trial from time to time, as may be necessary.

Evidence for the defence.

The provisions of the Code relating to the adjournment of a case under this Chapter [See Section 249] are contained in Section 224, by which it is enacted that the term of adjournment shall not exceed fifteen days.

A Magistrate trying a case under Chapter XIV [Criminal Procedure] is bound to summon witnesses cited for the defence. 3, Agra, 107, 2, *Id.* 215. Calcutta High Court, Abdool Setor, 26th June, 1865.

254. The provisions of Sections 187, 188, 189, 190, 191, and 192 of this Act shall be applicable to witnesses named in support of the defence.

Witnesses for the defence.

An accused in a case tried by a Magistrate is entitled to have examined the witnesses cited by him. The Calcutta High Court annulled a sentence in which such an examination had not been taken, and directed the Magistrate to act accordingly and pass a proper order. Abdool Setor, June 26th, 1865. See note to S. 253.

255. If the Magistrate shall find the accused person not guilty, he shall record judgment of acquittal. If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

Acquittal or conviction.

Section 381 declares that—

"When the trial in any Criminal Court is concluded, the Court, in passing judgment, if the accused be convicted, shall distinctly specify the offence of which, and the Section of the Indian Penal Code under which, he is convicted, or, if it be doubtful under which of two Sections the offence falls, shall distinctly express the same and pass judgment in the alternative, according to Section 72 of the said Code." For the form of finding, see Section 381.

By Section 429, it is enacted that—

"Every sentence or final order of a Criminal Court, together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding officer, and shall be dated and signed by such officer at the time of his making or passing the same, and the original shall be filed with the record of proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in proceedings before such officer, shall be incorporated in the sentence or order."

And Section 430, provides that—"if the vernacular language of the presiding officer be not English and the officer be sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in that language, and prefer to write the same in that language, the sentence or final order may be written in English."

A Magistrate cannot vary any sentence he may once have passed. 1, Bombay, 3. There is, however, an exception to this rule, see Section 164, which permits the discharge of the offender or the remission of his punishment, on his submission to the order or requisition of the Court, for refusing or omitting to comply with which he has been punished or committed for trial.

How the Magistrate is to proceed when after commencement of trial, he finds the case beyond his jurisdiction.

256. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or which, in the opinion of such Magistrate, ought to be tried by the Court of Session, the Magistrate shall stop further proceedings under this Chapter, and shall proceed in accordance with Chapter XII of this Act for conducting the preliminary enquiry in cases triable by the Court of Session.

It is only when a Magistrate finds, from aggravated circumstances in a case, that higher punishment is required than he can award, that he should commit an accused person to the Court of Session. Calcutta High Court, Cir. 5, 1865.

When several persons are charged with offences of various degrees arising out of one act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one, which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by a Court of Session, be chargeable against *any* of the accused. Agra Sudder Court, Cir. 64, 1862; also Calcutta High Court, Cir. May 19th, 1862.

CHAPTER XV. Ss. 257—272.

OF CASES TRIABLE BY THE MAGISTRATE IN WHICH A SUMMONS ON COMPLAINT SHALL ORDINARILY ISSUE.

Summons shall issue.

257. Whenever a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed or is suspected to have committed any offence triable by such Magistrate and punishable under the Indian Penal Code with imprisonment for a period not exceeding six months, it shall be lawful for such Magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a

certain time and place before such Magistrate to answer to the complaint. Provided that, if the Magistrate shall be satisfied or have reason to believe that the accused person is about to abscond, he may, instead of issuing a summons, issue his warrant in the first instance for the arrest of such accused person.

When warrant may issue.

For the rules regarding the issue and service of a summons, see Sections 69—74. For those regarding the issue and execution of a warrant of arrest, see Sections 76—99.

Because a Magistrate improperly proceeded in the first instance against an accused person by warrant, instead of by summons, the interference of the Superior Court cannot be exercised, as Section 426, Criminal Procedure, declares that no sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or defect in the proceedings on trial, unless the accused person shall have been sentenced to a larger amount of punishment than could be awarded for the offence of which, in the judgment of the Appellate Court, the accused person ought, upon the evidence, to have been found guilty, or unless, in the judgment of the Appellate Court, the accused shall have been prejudiced by such error or defect. Calcutta High Court, Aneef Putnee, September 26th, 1864.

Defendant may be admitted to bail or allowed to be at large upon personal recognizance.

258. If upon the day appointed, the accused person shall appear voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the Magistrate by virtue of a warrant, it shall be at the discretion of the Magistrate to admit the accused person to bail, or allow him to be at large upon his personal recognizance, as the Magistrate may direct. If the accused person cannot give bail when required to do so, he shall be committed to custody.

Regarding the admission to bail, see Sections 212, 213.

Non-appearance of complainant.

259. If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint; unless for some reason he shall think proper to adjourn the hearing of the same to some other day, upon such terms as he shall think fit.

A complaint once under trial and dismissed in accordance with the terms of S. 259, should not be revived. Calcutta High Court 461, 1864.

The Magistrate of the District cannot order a Magistrate exercising full powers to try a case dismissed on default under Section 259. *Id.* 833, 1863.

"Upon such terms as he shall think fit" These words evidently refer to the requiring of costs to be paid to the opposite party as a condition for the adjournment of a case, when that adjournment is caused by the laches of the complainant.

If summons be not obeyed, warrant.

260. If the person served with a summons shall not appear before the Magistrate at the time mentioned in such summons, and the Magistrate shall be satisfied that such summons was duly served in what shall be deemed by the Magistrate to be a reasonable time before the time therein appointed for appearing to the same, or if it shall appear to the Magistrate that after due diligence the summons could not be served according to the provisions of this Act, the Magistrate may issue his warrant to apprehend the accused person.

"Duly served." The following are the rules for the service of a summons on an accused person. "A summons shall be served on the accused personally, or in case the accused shall not be found, it may be left for him with some adult male member of his family residing with him." Section 71 "When the accused cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused ordinarily resides." Section 72.

If an accused person abscond or conceal himself, so that upon the warrant issued against him, he cannot be found, the Magistrate cannot, in cases tried under Chapter XV, proceed under Section 183, as the provisions of that Section are not extended to the trial of such petty cases. The only course to be taken is for the Magistrate to issue a fresh warrant. Calcutta High Court, Moddon Mohun Podar, 24th June, 1865.

Magistrate may dispense with personal attendance of accused.

261. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person complained against, and permit him to appear by an Agent duly authorized to act in his behalf. Provided that it shall be at the discretion of the Magistrate at any stage of the proceedings to direct the personal attendance of such person. When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of the Agent if the accused person has been permitted to appear by Agent, or the accused person may be required to attend to hear such sentence.

Summons to witness to attend and give evidence.

262. If it appear to the Magistrate that any person is likely to give material evidence on behalf of the complainant or the accused person, and that such person will not

voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such complaint, the Magistrate shall issue his summons to such person under his signature and seal, requiring him to appear at a time and place mentioned in the summons, to testify what he knows concerning the matter of the complaint.

Magistrate may summon necessary evidence.

263. It shall be at the discretion of the Magistrate, at any stage of the trial, to summon and examine any witness whose evidence he may consider essential to the just decision of the case. The Magistrate may also examine as a witness any person in attendance, although not summoned as a witness.

Parties should ordinarily be left to bring their witnesses with them. A Magistrate should summon witnesses in cases under this Chapter, *only* when it appears that they are likely to give material evidence, and that they will not voluntarily appear. No diet allowance can be required for such witnesses, as the former law, Act VII. of 1846, has been repealed by Act XVII. of 1862 and there is now no law on the subject. Calcutta High Court, 160, 1862.

Application of previous rules.

264. The provisions of Sections 187, 188, 189, 190, 191, and 192 shall be applicable to witnesses summoned according to the provisions of Sections 262 and 263 of this Act.

See also Sections 69—74.

Admission by accused of truth of complaint.

265. On the appearance of both parties on the day fixed for the trial, the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted. If the accused person admit the truth of the complaint, and show no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

The difference between the mode of trial prescribed for petty offences and for more serious offences, but within the jurisdiction of a Magistrate, (Section 250) should be noted.

The power of putting questions to an accused person (Sections 202, 250) is not conferred on Magistrates in the trial of cases under Chapter XV. Madras High Court, 1863.

Proceeding when no such admission is made.

266. If the accused person do not admit the truth of the complaint, the Magistrate shall proceed to hear the complain-

ant and such witnesses as he may produce in support of his complaint, and also to hear the accused person and such witnesses as he shall produce in his defence.

An accused person may be allowed to bring his own witnesses, if he wishes to do so; or he may demand an adjournment of the trial for their production. In such a case the Magistrate should grant a summons for the attendance of any witness who will not voluntarily appear, when it appears that he is likely to give material evidence for the accused person. Calcutta High Court 188, 1865.

The evidence of some witness was held to be necessary for a conviction of an offence tried under Chapter XV., the Court (five Judges) holding that a complainant in such cases before a Magistrate was not regarded by the Code of Criminal Procedure as a witness, so as to make his evidence, without additional or concurrent testimony, legally sufficient under Act II. of 1855, Section 28, for the conviction of the accused. 3, Agra, 40.

Every person accused of an offence before any Criminal Court may of right be defended by Counsel or authorised Agent S. 432. This has however been qualified by Act XX, of 1865, S. 40. See note to S. 182.

How the evidence is to be recorded.

267. The Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanor of any witness whilst under examination.

Ordinarily, in cases under this Chapter, the record of the evidence consists merely of a memorandum taken by the Magistrate of the substance of the evidence of each witness. The Calcutta High Court (Cir., 30th March, 1864) has ordered that when it may appear to a Magistrate that a witness is giving false evidence, so that criminal proceedings are likely to be necessary, the Magistrate should take down at length the evidence of the particular witness. A full record of the evidence in the Vernacular is not necessary in order to a conviction for giving false evidence; but this precaution will serve to obviate any doubts regarding the accuracy of the Magistrate's brief note of the evidence, where the commitment rests wholly or mainly on that note.

Manner of recording evidence in certain cases.

268. In any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in Section 195, or in the manner

provided by Section 196 of this Act, if within the jurisdiction of such Magistrate the local Government shall have made an order as provided in that Section. In any such case the provisions of Sections 199 and 200 shall be applicable to the evidence so taken.

Adjournment.

269. Before or during the hearing of any complaint, it shall be lawful for the Magistrate to adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties; and if on the day to which such hearing or such further hearing shall have been so adjourned, the accused person shall not appear, the Magistrate may issue his warrant for the arrest of such person; and if the complainant shall not appear, the Magistrate may dismiss the complaint.

A complaint once dismissed should not be revived. Calcutta High Court 461, 1864.

Magistrate may award amends in cases of frivolous and vexatious complaints.

270. In any case where the Magistrate shall dismiss the complaint as frivolous and vexatious, it shall be lawful for him, in his discretion, by his order of dismissal, to award that the complainant shall pay to the accused person such amends, not exceeding fifty Rupees, as to such Magistrate shall seem just and reasonable. The sum so awarded shall be recoverable by distress and sale of the moveable* property belonging to the complainant, which may be found within the jurisdiction of the Magistrate of the District,† and in default of such distress, by imprisonment in the Civil jail, for any time not exceeding thirty days, unless such amends shall be sooner paid.

* S 6

† Ss. 14, 18

A similar provision is made by Section 61 for the levy of fines.

It is not necessary that any charge should be preferred, before a person can be fined for making a frivolous or vexatious complaint. The Magistrate should simply call upon the complainant to show cause why he should not be fined. Calcutta High Court 672, 1863. A Subordinate Magistrate can award amends, but such order is not appealable, as it is not a conviction within the terms of Section 412. *Id.* 904, 1863.

Amends cannot be awarded in a case of theft, since trials for theft do not fall under Chapter XV. *Id.* Gogun Sen, April 3rd, 1865. 1, Bombay, 181. Madras High Court, 1864.

The award of amends can in no case exceed 50 Rupees. Although several persons may have been frivolously charged, the complainant cannot be mulcted to the extent of 50 Rs. for each individual so accused. Calcutta High Court 894, 1864. An award of amends is no ground for the abandonment of a prosecution under Section 211, Penal Code, for making a false complaint with intent to injure. But if a Magistrate

CH. XV. 271&272 — thinks that by the fine imposed as amends, sufficient punishment has been awarded, he may, under Section 169, refuse leave to prosecute. *Id* 111, 1865.

Magistrate may permit withdrawal of the complaint.

271. If a complainant, at any time before a final order is passed in any case under this Chapter, shall satisfy the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit such complainant to withdraw such complaint. A complaint withdrawn under this Section shall not again be entertained.

Withdrawals of complaints and compromises can be permitted only in cases tried under Chapter XV. A party may compound an offence which consists only of an act irrespective of the intention of an offender, and for which the injured person may bring a civil action *e. g* assault, illegal confinement, adultery (Exception S. 214, Penal Code) and such like, but if he once brings such an offence to the cognizance of the Criminal Courts, he cannot withdraw the charge. Calcutta High Court 166, 164, 181, 1865.

The Judicial Commissioner, Punjab, delivered the following opinion on the terms of Section 271. "A charge of adultery does not fall under Section 271, as it is not an offence triable under Chapter XV. Criminal Procedure. It may, however, be compounded [Section 214, Penal Code, Illus. *d.*], that is, settled out of Court, and the husband does not incur any legal penalty, if he receives hush-money from the adulterer. This is a part of the Code of substantive law The Code of Criminal Procedure lays down in what cases a complaint *once preferred* may be withdrawn. The complainant can only do so by permission of the Court and on showing sufficient grounds. A Criminal Court is not lightly to be moved and converted into an engine of oppression. If a man launches his case, he stands the consequences of convicting his adversary, or being himself convicted of having made a false accusation. The Code has conveniently made the fact of a summons or warrant being issued the limitation of the power of withdrawal."

Acquittal or conviction.

272. If the Magistrate in any case tried under this Chapter, shall find the accused person not guilty, he shall record a judgment of acquittal. If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

"Every sentence or final order of a Criminal Court, together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding officer, and shall be dated and signed by such officer at the time of his making or passing the same, and the original shall be filed with the record or proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in proceedings before such officer, shall be incorporated in the record of the sentence or order." S. 429.

"If the vernacular language of the presiding Officer be not English, and the Officer be sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in

that language, and prefer to write the same in that language, the sentence or final order may be written in English." S. 430. CH XV XVI 273

"When the trial in any Criminal Court is concluded, the Court, in passing judgment, if the accused person be convicted, shall distinctly specify the offence of which, and the Section of the Indian Penal Code under which, he is convicted, or if it be doubtful under which of two Sections, the offence falls, shall distinctly express the same, and pass judgment in the alternative according to Section 72 of the said Code." S 381.

Section 382 gives the following forms of findings applicable to trials under this Chapter of the Code of Criminal Procedure in which no formal charges need be prepared. "The Court finds that Z has used criminal force and has thereby committed an offence punishable under Section 353 of the Indian Penal Code, and directs that the said Z be *(sentence)*." Or, "the Court finds that the complaint of assault is not proved, acquits Z, and directs that he be discharged."

CHAPTER XVI. ss. 273—278.

OF ENQUIRIES AND TRIALS BEFORE THE SUBORDINATE MAGISTRATES.

Reference of cases to Subordinate Magistrate.

273. Criminal cases brought before the Magistrate of the District* or a Magistrate in charge of a division of a District,* either on complaint preferred directly to such Magistrate or on the report of a Police Officer, may be referred by such Magistrate to any Magistrate subordinate to him. The reference shall be for enquiry, or for trial if the offence be triable by such Subordinate Magistrate, or with a view to commitment to the Court of Session,† if such Magistrate is competent to commit to the Court of Session,† or with a view to commitment to the Supreme Court of Judicature‡ if such Subordinate Magistrate is competent to commit to such Supreme Court.‡ Provided that nothing in this Section shall prevent any Subordinate Magistrate from entertaining, either on complaint preferred directly to such Magistrate or on the report of a Police Officer (in cases in which the Subordinate Magistrate is authorized to receive such report), any case that such Magistrate is, by any law for the time being in force, competent to entertain.

* Ss 14, 18

† S 13.

‡ High Court.

Proviso.

The Magistrate of the District, or Magistrate who is authorized to receive a complaint without reference from the Magistrate of the district [see Section 66], may at once make over the complaint to be

enquired into or determined by any Magistrate subordinate to him, or he may, after examination of the complainant, order a summons or warrant to issue, and then direct the case to be tried by any Magistrate subordinate to him who may be competent to try it. Calcutta High Court Circular 6, 1864.

The Agra Sudder Court [August 31st, 1863] has held that if the case be referred for enquiry to a Subordinate Magistrate, he cannot try it, although he may have jurisdiction to do so. The Calcutta High Court [406, 1863] has declared that the main principle regarding the jurisdiction of Subordinate Magistrates laid down in Chapter XVI is, that no Subordinate Magistrate can legally record evidence in a case in which he is not competent to convict. Unless there are good *primâ facie* grounds for suspecting a case to be without foundation, and, as such, not worthy of a regular trial, it should not be referred to a Judicial Officer who is not competent to try it.

Cases how to be referred.

274. When a criminal case is referred under this Chapter to a Subordinate Magistrate, the order of reference, if the case has been brought forward on the report of a Police Officer, shall be recorded on such report, and all processes issued for causing the attendance of the accused person or the witnesses, shall direct them to attend before such Court.

Subordinate Magistrates to follow the same rules of procedure as the Magistrate.

275. In the enquiry into or trial of cases under this Chapter, the Subordinate Magistrates shall be guided by the rules prescribed for the guidance of the Magistrate of the District* in similar cases; and Police Officers and others shall be bound to obey all orders and processes issued in such cases in like manner as if such orders or processes had been issued by the Magistrate of the District.

* S 14, 18.

The "rules" referred to here will be found in Chapters XII XIV, XV.

How the Subordinate Magistrate is to proceed in cases beyond his jurisdiction.

276. If, in the course of a trial before a Subordinate Magistrate, the evidence shall appear to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try, or for which he is not competent to commit the accused person for trial before the Court of Session,† he shall stay proceedings and shall submit the case to the Magistrate to whom he is subordinate. The Magistrate to whom the case is submitted shall either try the case himself or refer it to any Officer subordinate to him having jurisdiction, or he may commit the accused person for trial before the Court† of

† S 13.

Session. In any such case, such Magistrate or other Officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

"Shall submit the case to the Magistrate to whom he is subordinate." This would be the Magistrate of the District or the Magistrate in charge of the division of the District [See Section 273].

A Magistrate to whom a case is referred under Section 276 by a Subordinate Magistrate who finds that he has no jurisdiction, cannot upon perusal of the proceedings held by that Subordinate Magistrate, dismiss the charge. He must try the case, and if he finds that there is no legal proof, he must acquit. Madras High Court

In what cases Subordinate Magistrate shall not pass sentence, but may refer case to the Magistrate.

277. If in any case tried by a Subordinate Magistrate having jurisdiction, in which the accused person is found guilty, such Magistrate shall consider the offence established against the accused person to call for a more severe punishment than he is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate* to whom he is subordinate, and such Magistrate shall pass such sentence or order in the case as he may deem proper and as shall be according to law. In any such case, the Magistrate to whom the proceedings are submitted, may examine the parties, and recall and examine any witness who shall already have given evidence in the case, and he may call for or take any further evidence.

How the Magistrate is to proceed in such cases.

* See note to s. 276.

A Magistrate to whom a case has been referred under Section 277, may acquit the accused person, contrary to the finding of the Subordinate Magistrate. Jud. Com. Punjab, 1863.

Subordinate Magistrate, if empowered to do so, may, instead of convicting the accused, commit him for trial before the Court of Session.

278. Nothing in the last preceding Section shall be held to prevent the Subordinate Magistrate in any such case as is therein described, if such Magistrate is empowered† to hold the preliminary enquiry into cases triable by the Court of Session‡ and to commit persons to take their trial before such Court, from committing the accused person for trial before the Court of Session instead of finding him guilty. If the Subordinate Magistrate shall be of opinion that the accused person should be committed for trial before the Court of Session,§ he shall proceed in accordance with Chapter XII.‖ of this Act, for conducting the preliminary enquiry in cases triable by the Court of Session.§

Mode of procedure in such cases.

† s. 38.
‡ s. 13.
§ s. 13.
‖ ss. 170—232

CH XVII
s 279
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A Magistrate of a District cannot cancel a commitment made by a duly empowered [Section 38] Subordinate Magistrate. The person committed can be delivered only by due course of law. Madras High Court, 1864.

A charge of an offence triable by a Court of Session, or by the Magistrate of the District [see Schedule] having been preferred to a Subordinate Magistrate, who was not competent to hold the trial, but was vested with powers under S. 38 to hold a preliminary enquiry into cases triable by the Court of Session, the Calcutta High Court [299, 1865], held that that officer should have referred it for trial to the Magistrate of the District [S 276], instead of holding a preliminary enquiry and committing it to the Court of Session; for the latter procedure, which was adopted by him, though strictly legal, should, as much as possible, be avoided, as it takes up unnecessarily the more valuable time of the Sessions Judge.

CHAPTER XVII. s. 279.

PLACE WHERE PRELIMINARY INVESTIGATIONS AND TRIALS HELD, AN OPEN COURT.

Place where investigation made, an open Court.

279. The place in which the Court of a Magistrate is held for the trial of any complaint or for the purpose of conducting any preliminary investigation into any case triable by a Court of Session* or Supreme Court of Judicature,† or any Superior Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them; but it shall be lawful for any such Court, if it shall think fit, to order that during the investigation into any particular case triable by a Court of Session* or by a Supreme Court of Judicature,† no person shall have access to or be or remain in such room or building without the consent or permission of the Court.

* s 18
† High Court

A judicial investigation by a Magistrate into a Railway accident should be conducted at the nearest Railway station to the scene of the accident. Government of Bengal, 5156, September 8th, 1865.

CHAPTER XVIII. ss. 280—294.

OF RECOGNIZANCE AND SECURITY TO KEEP THE PEACE.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that the provisions of Chapter

XVIII apply to European British subjects It would seem doubtful whether Section 280 would apply, since, although under 53 Geo III c 105, Section 155, or Act VII of 1853, a European British subject may be convicted by a Magistrate and Justice of the Peace of an assault, and it might therefore be held that there is nothing to prevent the further action of the Magistrate under Section 280, the absence of any special provision on the subject, and the fact that such provision is made by Section 282, for taking bail from a European British subject to keep the peace, would seem to indicate that the Legislature intend to exclude such persons from the operation of Section 280

Personal recognizance to keep the peace in cases of conviction.

280. Whenever a person charged with rioting,* assault,† or other breach‡ of the peace, or with abetting§ the same, or with assembling‖ armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Court of Session¶ or the Magistrate of the District* or other Officer exercising the powers† of a Magistrate, and the Court or Magistrate or other Officer as aforesaid by which the accused person is convicted, or the Court or Magistrate or other Officer as aforesaid by which the final sentence or order in the case shall be passed, shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace, from the person so convicted, it shall be lawful to such Court or Magistrate or other Officer as aforesaid so convicting the accused person, or so passing the final sentence or order as aforesaid, in addition, to direct that the person so convicted be required to execute a formal engagement,‡ in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by the Magistrate of the District* or other Officer exercising the powers† of a Magistrate, or three years if the sentence or final order be passed by a Court of Session.§ When any accused person shall be convicted of any offence specified in this Section by an Officer not exercising the powers of a Magistrate, such Officer, if he consider it just and necessary to require a penal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate of the District,* or other Officer exercising the powers† of a Magistrate to whom such Officer may be subordinate, who shall deal with the case as if the conviction had been before himself.

* S 146, P C.
† S 351, P C
‡ Chapter VIII Penal Code
§ Ss 107, 108, P C
‖ S 157, P C.
¶ S 13
* Ss 14 18
† S 16
‡ S 284, and D appendix
§ S 18.

CH. XVIII. ss. 281 & 282 — The different procedure prescribed in this and in Section 282 should be noted. Under Section 280 a recognizance can be demanded from a person convicted of an offence against the public peace, without any further preliminary proceedings, the Criminal Court being satisfied from the facts on which the conviction has been recorded, that further security against a breach of the peace is necessary; whereas several formal proceedings are required by S. 282.

Form D Appendix.

Security to keep the Peace.

281. In cases in which it may appear necessary to require security* for keeping the peace, in addition to the personal* recognizance of the party so convicted, it shall also be lawful to the Court or Magistrate or other Officer as aforesaid, empowered to require a penal recognizance under the last preceding Section, to require security in addition thereto and to fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in custody for any time not exceeding one year if the order be passed by the Magistrate of the District† or other Officer exercising the powers‡ of a Magistrate, or three years if the order be passed by the Sudder§ Court or by a Court of Session.||

† Ss. 14, 18.
‡ S. 16.
§ S. 19.
|| S. 13.

The rules regarding the enforcement of the terms of the bond (Sections 293, 294) are the same in both cases.

A Sessions Judge on appeal having reversed the order of a Magistrate convicting and sentencing a person under Section 155, Penal Code, the Calcutta High Court held that there were no longer any grounds for calling upon him to execute a recognizance. The order of the Magistrate demanding the same was therefore annulled as illegal. Anund Chunder Chuckerbutty, 21st June, 1865.

Cash cannot be accepted from a person required to find security to keep the peace. Jud. Com., Punjab, 1863.

Summons to any person to show cause why he should not enter into a bond to keep the peace.

282. It shall be lawful for the Magistrate of the District* or other Officer exercising the powers† of a Magistrate, whenever he shall receive credible information that any person, whether a European British subject or not, is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, to summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace with or without sureties as such Magistrate shall think fit.

* Ss. 14, 18.
† S. 16.

The duties of a Superior Police Officer in cases of apprehended breach of the peace of a serious nature are thus laid down in Act V of 1861, Section

17 "When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police force ordinarily employed for preserving the peace is not sufficient for its preservation, and for the protection of the inhabitants, and the security of the property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police Officer may require, to act as Special Police Officers for such time and within such limits as he shall deem necessary; and the Magistrate, to whom such application is made shall, unless he see cause to the contrary, comply with the application."

Section 18 describes the duties of such Special Police Officers, and Section 19 prescribes the penalty for refusal to serve as such.

The law evidently does not require that the Magistrate proceeding against a European British subject under the foregoing and following Sections, should be a Justice of the Peace. It is requisite that he should be either the Magistrate of the District, or an officer exercising the powers of a Magistrate (Section 16.)

If a Magistrate considers that the complaint of a person is "credible information," there is no reason why he should not act under Section 282. Agra Sudder Court, 12th September, 1862. A report of a Subordinate Magistrate is credible information. 2, Madras, 240.

Form of Summons.

283. The summons shall set forth the substance of the information, the amount of the bond, and the term* for which it is to be in force, and if security is called for, the number of sureties required, and the amount in which they are to be bound respectively. Such summons shall be served in the manner provided by this Act for the service of a summons on an accused person.

* See S 289, 290.

Penalty.

284. The penalty of such bond, which shall be in the form (D) given in the Appendix or to the like effect, shall be fixed with a due regard to the circumstances of the case and the means of the party, and the amount in which the sureties shall be bound shall not exceed the said penalty.

Bail Bonds in Criminal cases should be written on plain paper. See Act X of 1862, Schedule B, Art. 2.

Warrant of arrest.

285. If the person summoned shall not attend on the day appointed, the Magistrate† or other Officer as aforesaid,† if satisfied that the summons has been duly served, may issue a warrant for his arrest. Provided that, whenever it shall appear to the Magistrate or other Officer as aforesaid, upon the report of a Police Officer or upon other credible information, the substance of which report or information shall be recorded, that there is just reason to fear the commission of a breach of the peace, which may probably be

† S. 282.

prevented by the immediate arrest of any person, it shall be lawful for the Magistrate at any time to issue a warrant for the arrest of such person.

* S. 282.

Magistrate may dispense with personal attendance of party informed against.

286. The Magistrate* or other Officer as aforesaid* may, if he see sufficient cause, dispense with the personal attendance of the person informed against and permit him to appear and enter into the required security, or show cause against such requisition, by an Agent duly authorized to act in his behalf.

By Section 307 it is provided that any evidence taken under this Chapter "shall be taken in the manner prescribed by Section 267, subject to the provision contained in Section 268 of this Act."

Section 267 declares that "the Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanour of any witness whilst under examination." Section 268 adds that "in any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in Section 195, or in the manner provided by Section 196 of this Act, if within the jurisdiction of such Magistrate the local Government shall have made an order as provided in that Section. In any such case, the provisions of Sections 199 and 200 shall be applicable to the evidence so taken."

Discharge of party informed against.

287. If on the appearance of the person, or of his Agent if he is permitted to appear by Agent, the Magistrate† or other Officer as aforesaid† shall not be satisfied that there is occasion to bind such person to keep the peace, he shall direct his discharge.

† S. 282.

‡ S. 282.

Consequence of not complying with order of Magistrate to enter into a bond.

288. If the Magistrate‡ or other Officer as aforesaid‡ shall be satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if the person shall fail to comply with the order, it shall be lawful for the Magistrate‡ or other Officer as aforesaid‡ to commit him to jail.

Regarding the term of confinement, and the conditions upon which release may be obtained, see following Section.

An order under Section 288 is not appealable. If it is contrary to law, the Judge should proceed under Section 434, and report the proceedings to the High Court. Calcutta High Court 1014, 1863.

Limit for confinement.

289. The period for which the Magistrate* or other Officer as aforesaid* may bind a person to keep the peace with or without security, shall not exceed one year. When a person shall be committed to jail under the last preceding Section, he shall not be detained by authority of the Magistrate* or other Officer as aforesaid* beyond the term of one year, and shall be released whenever he shall comply with the order within that term. * S. 282.

Extension of period of confinement.

290. Whenever it shall appear to the Magistrate† or other officer as aforesaid† that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session,‡ and such Court, after examining the proceedings of the Magistrate† or other Officer as aforesaid† and making such further enquiry as such Court may think necessary, may, if it shall see cause, authorize the Magistrate† or other Officer as aforesaid† to extend the term for a further period not exceeding one year, and if the party shall fail to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate† or other Officer as aforesaid shall direct under the orders of the Court of Session,† he may be kept in confinement for such further period or until he shall give such bond within that period. † S 282. ‡ S 282.

Discharge of recognizances.

291. The Magistrate§ or other Officer as aforesaid§ may, if he shall see sufficient cause, discharge any recognizance and surety for keeping the peace taken under the preceding Sections, and may order the release of the person confined for default in entering into such recognizance or giving such security. § S 282.

Discharge of sureties.

292. A surety for the personal appearance of another person may at any time apply to the Magistrate‖ or other Officer as aforesaid,‖ to be relieved from his engagement as surety. On such application being made, the Magistrate shall issue his summons or warrant, in order that the person for whom ‖ S 282.

CH XVIII ss 293&294

such surety is bound, may appear or be brought before him. On the appearance of the person to such warrant or on his voluntary surrender, the Magistrate or other Officer as aforesaid, shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof shall commit him to custody.

Enforcement of penalty against the principal party.

293. Whenever it may be proved before the Magistrate* or other Officer as aforesaid* that any recognizance or other bond taken under this Chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by the bond to pay the penalty thereof or to show cause why it should not be paid; and if sufficient cause be not shown and the penalty be not paid, the Magistrate* or other Officer as aforesaid* shall proceed to recover the same by the attachment and sale of any of the moveable† property belonging to the person bound thereby which shall be found within the jurisdiction of the Magistrate‡ of the District, and if the penalty be not paid and cannot be recovered by such attachment and sale, the party shall be liable to imprisonment by order of the Magistrate* or other Officer as aforesaid* in the Civil Jail for a period not exceeding six months.

* s 282

† s 6

‡ Ss 14, 18.

Recovery of penalty from surety.

294. Whenever it may be proved before the Magistrate‡ or other Officer as aforesaid‡ that any bond with a surety has been forfeited, the Magistrate or other Officer as aforesaid may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable, or to show cause why it should not be paid; and if no sufficient cause be shown, and the penalty be not paid, the Magistrate or other Officer as aforesaid may proceed to recover payment of the penalty from such surety in the same manner§ as from the principal party.

‡ s 282

§ s 293

CHAPTER XIX. Ss. 295—307.

SECURITY FOR GOOD BEHAVIOUR.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that this Chapter does not apply to European British subjects. Section 25, however, enacts that "no person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal Procedure contained in this Act. Provided that nothing in this Section shall be held to authorize the trial or commitment for trial before any Criminal Court of any person, who, in respect of the offence with which he was charged, is not subject to the jurisdiction of that Court." As matters cognizable under Chapter XIX. are not trials or commitments for trial, the cause for this exemption is not apparent. ss. 295 & 296 —

When Magistrate may require security for good behaviour for six months.

295. Whenever it shall appear to the Magistrate of the District* or to an Officer exercising the powers† of a Magistrate that any person is lurking within his jurisdiction not having any ostensible means of subsistence, or who cannot give a satisfactory account of himself, it shall be competent to such Magistrate or other Officer as aforesaid to require security for the good behaviour of such person for a period not exceeding six months.

* Ss. 14, 18.

† S. 16

Orders passed by a Magistrate under this Section are appealable to the Court of Session. See Section 409.

A Subordinate Magistrate has no jurisdiction over cases under Chapter XIX. Madras High Court. Cash cannot be received as security for good behaviour. Jud. Com., Punjab, 1863.

When Magistrate may require security for good behaviour for one year

296. Whenever it shall appear to such Magistrate‡ or other Officer as aforesaid‡ from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief, or a receiver of stolen property knowing the same to have been stolen, or of notoriously bad livelihood, it shall be competent to such Magistrate‡ or other Officer as aforesaid‡ to require security for the good behaviour of such person for a period not exceeding one year.

‡ S. 295.

Orders passed by a Magistrate under this Section are appealable to the Court of Session. See Section 409.

A Magistrate cannot require security for good behaviour merely on the report of a Police Officer, as such report is not evidence. Calcutta High Court, Alum Sheikh, January 8th, 1866.

CH. XIX. ss. 297–299.

How to proceed in cases beyond one year.

297. Whenever it shall appear to such Magistrate* or other Officer as aforesaid* from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief, or a receiver of stolen property knowing the same to have been stolen, or of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the Magistrate* or other Officer as aforesaid* shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

* S. 295

By Sections 400, 401, Penal Code, the belonging to a gang of persons associated for the purpose of dacoity, theft, or robbery is made a punishable offence, and by Section 413, habitually receiving or dealing in stolen property, is provided for.

The Calcutta High Court acquitting a person, convicted by the Sessions Judge of an attempt to commit murder [Section 307, Penal Code], directed the Magistrate to take security from him, as the Court considered that he was of a character so desperate and dangerous, as to make his release without security hazardous to the community. Beharee *alias* Kureem Bux, June 3rd, 1865.

Case to be laid before the Court of Session.

298. If the person required to furnish security, as provided in the last preceding Section, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session,† which, after examining them and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the Magistrate‡ or other Officer as aforesaid‡ as it may judge proper.

† S. 18.

‡ S. 295.

There is no appeal from the order passed by a Sessions Judge under Section 298, [3, Agra, 108]. Orders passed by a Magistrate under Sections 295, 296, without reference to the Sessions Judge, are however appealable under Section 409.

Court of Session may require security not exceeding three years.

299. If the Court of Session§ shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three

§ S. 13.

years, in the event of his not giving the security required from him. CH. XIX. SS. 300–302.

See S. 301.

There is no appeal from an order passed by a Sessions Judge under Section 299. 3, Agra, 108.

What the order for security is to contain.

300. In every instance in which security for good behaviour shall be required by the Court* of Session or the Magistrate† or other Officer as aforesaid,† the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order. The security-bond shall be in the form (F) given in the Appendix, or to the like effect.

* S. 13
† S. 295.

In default of security, party to be committed to prison.

301. In the event of any person required to give security under the provisions of the foregoing Sections, failing to furnish the security so required, he shall be committed to prison until he furnish the same. Provided that no party shall be kept in prison for a longer period than that for which the security has been required from him.

Proviso.

As regards the nature of the imprisonment to be undergone by a person failing to furnish security for good behaviour, the practice seems to be various. The Calcutta High Court [Cir. 23, 1862], the Agra Sudder Court, and the Judicial Commissioner, Oude, have ruled that the terms "shall be committed to prison" imply simple confinement in Jail, the Judicial Commissioner, Punjab, [3155, June 28th, 1862], on the other hand, has ordered that the imprisonment should be rigorous, but may be simple. The Madras High Court has directed Magistrates to follow the terms of the law, as they had no further concern with the matter; thus apparently leaving it to the officer in charge of the Jail to exercise his discretion.

After expiration of the term of confinement in default of security, a second security cannot be demanded, except upon some new proof of bad livelihood, or that a person is not capable of following an honest calling. Calcutta High Court, Sheikh Himayut, July 29th, 1862.

When Magistrate may release persons under requisition of security.

302. The Magistrate of the District§ or other Officer exercising the powers‖ of a Magistrate is empowered, at any time, to exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order or by the order of any Officer subordinate to him, provided he shall be of opinion that

§ Ss. 14, 16.
‖ S. 16.

CH XIX ss 303-305

such person can be released without hazard to the community.

The powers of a Magistrate, under this Section, would apparently extend even over cases laid before the Court of Session under S. 298, since the order in such a case would be his own order, though it might have been confirmed or modified by that Court.

* S. 302.

When he must report.

303. In any case in which a Magistrate* or other Officer as aforesaid* shall be of opinion that any person confined under requisition of security for good behaviour by order of a Court of Session, can be safely released without such security, the Magistrate or other Officer as aforesaid shall make an immediate report of the case for the orders of the Court which shall have required the person to furnish the security.

Discharge of surety.

† S 302

304. A surety for the good behaviour of a person may at any time apply to the Magistrate† or other Officer as aforesaid† to be relieved from his engagement as surety. On such application being made, the Magistrate or other Officer as aforesaid shall issue his summons or warrant, in order that the person may appear or be brought before him. On the appearance of the party pursuant to the warrant or on his voluntary surrender, the Magistrate or other Officer as aforesaid shall direct the engagement of the surety to be cancelled, and shall call upon the person to give fresh security, and in default thereof shall commit him to custody.

‡ S 302.

Proceeding to compel payment of penalty by sureties.

305. Whenever the Magistrate‡ or other Officer as aforesaid‡ shall be of opinion that, by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, subsequent to his having given such security, proceedings should be had upon the bond executed by the surety, he shall give notice to the surety to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause be shown, the Magistrate‡ or other Officer as aforesaid‡ shall proceed to recover the penalty from such surety by the attachment and sale of any moveable§ property belonging to such surety which may be found within the jurisdiction of the Magistrate‖ of the District; and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety shall be liable to imprisonment by order of the Magistrate or other

§ S 6.

‖ Ss 14 18

Officer as aforesaid in the Civil jail, for a period not exceeding six months.

Issue of summons and warrant of arrest.

306. The several provisions of the last preceding Chapter relating to the issue of summons* and warrant of arrest† for securing the personal attendance of the party informed against, shall apply to proceedings taken under this Chapter against persons required to give security for their good behaviour.

* S. 283.
† S. 285.

Manner of taking evidence under Chapter XVIII or this Chapter.

307. Any evidence taken under Chapter XVIII or this Chapter, shall be taken in the manner prescribed by Section 267, subject to the provision contained in Section 268 of this Act.

Section 267 enacts that "the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanour of any witness whilst under examination." Section 268 enacts that "in any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in Section 195, or in the manner provided in Section 196 of this Act, if within he jurisdiction of such Magistrate the local Government shall have made an order as provided in that Section. In such case the provision of Sections 199 and 200 shall be applicable to the evidence so taken."

CHAPTER XX. ss. 308—315.

Of Local Nuisances.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that Chapter XX. applies to European British subjects.

Magistrate may order removal of nuisances.

308. Whenever the Magistrate‡ of a District or of a division§ of a District may consider that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place, or that any trade or occupation, by reason

‡ Ss. 14. 18.
§ S. 18.

of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place, or that the construction of any building or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented, or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public, he may issue an order to the person causing such obstruction or nuisance or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank, or well as aforesaid, calling on such person, within a time to be fixed in the order, to remove such obstruction or nuisance, or to suppress or remove such trade or occupation, or to stop the construction of, or to remove such building, or to alter the disposal of such substance, or to fence such tank or well, (as the case may be,) or to appear before such Magistrate within the time mentioned in the order, and show cause why such order should not be enforced.

It is well to bear in mind the terms of Section 268, Penal Code, which declares that a "person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage."

A Magistrate cannot interfere to reopen a private path leading from the house of a person to a public thoroughfare, as such path is not a thoroughfare or public place The person affected was referred to the Civil Court. Bisso Nath Bhuttacharjee, February 20th, 1865.

Service or notification of order.

309. Such order shall, if practicable, be served personally on the person to whom it is issued; but if personal service is found to be impracticable, the order shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

The proclamation would probably be made in the manner prescribed by Section 183 for cases in which proclamation is made for an accused person who may have absconded or concealed himself to avoid a warrant of arrest.

310. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same or to appear before the Magistrate to show cause as aforesaid, or he may apply to the Magistrate by petition for an order for a Jury to be appointed to try whether the order is reasonable and proper. On receiving such petition, the Magistrate shall forthwith appoint a Jury which shall consist of not less than five persons, whereof the President and one-half of the Members shall be nominated by such Magistrate, and the remaining Members by the party petitioning. The Magistrate shall suspend the execution of the order pending such enquiry, and be guided by the decision of the Jury, which shall be according to the opinion of the majority. If the petitioner shall, by neglect or in any other way, prevent the appointment of a Jury, or if from any cause the Jury so appointed shall not decide and report within a reasonable time to be fixed in the order for the appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate; and if from any of the above causes no decision be made by the Jury, the order of the Magistrate shall be carried into effect as hereinafter provided.

Person ordered shall obey the order, or may claim a Jury.

Constitution of Jury.

Proceeding in case of neglect by Jury.

In appointing a Jury under this Section, the Magistrate should be careful to fix a time within which their report must be submitted. "The Magistrate shall suspend the execution of the order &c." In special cases a discretionary power is reposed in the Magistrate to enforce immediate obedience to his orders. See Section 314.

311. If the person to whom the order mentioned in Section 308 is issued shall not obey such order, or show cause against the same as hereinafter provided, or petition for a Jury within the time specified in such order, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code, and the Magistrate who issued such order may proceed to carry such order into execution at the expense of such person, and may realize such expenses either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of the personal property of the person aforesaid, and no suit or action shall be

Procedure in case of disobedience or neglect by party ordered.

entertained in any Court in respect of anything necessarily or reasonably done to give effect to such order.

Section 188 of the Indian Penal Code enacts that "whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or both: and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or both. *Explanation.* It is not necessary that the offence should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce harm."

By the Schedule to this Act, offences under Section 188 are triable only by the Magistrate of the District (*i. e.* an officer exercising the powers of a Magistrate) and a Subordinate Magistrate of the 1st Class.

"Personal property," that is, moveable property, defined in Section 6.

If Jury find order of Magistrate to be reasonable and proper.

312. If, in a case referred to a Jury, the Jury shall find that the order of the Magistrate is reasonable and proper, the Magistrate shall give notice thereof to the person to whom the order was issued, and shall add to such notice an order to obey the order first mentioned within a time to be fixed therein, under the penalty provided by the Indian Penal Code as aforesaid. If such latter order shall not be obeyed, the Magistrate may proceed as in the last preceding Section.

If party ordered satisfy the Magistrate that the order is not reasonable and proper.

313. If the person to whom the order of the Magistrate is issued, shall appear and show cause against the same, and shall satisfy the Magistrate that the order is not reasonable and proper, no further proceedings shall be taken in the case.

Issue and enforcement of injunction.

314. If, pending the enquiry by a Jury, the Magistrate shall consider that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, it shall be lawful for such Magistrate to issue such an injunction and order to the person mentioned in that behalf in Section 308, as shall

be required to obviate or prevent such danger or injury, and in default of such person forthwith taking all necessary measures ordered to be taken by such injunction or order, the Magistrate may himself use or cause to be used such means as may be necessary to obviate such danger or to prevent such injury, and no suit or action shall be entertained in respect of anything necessarily or reasonably done for that purpose.

Saving of certain provisions.

315. Nothing in this Chapter shall interfere with the provisions of Section XLVIII of Act XXIV of 1859 *(for the better regulation of the Police within the territories subject to the Presidency of Fort St. George)*, or of Section XXXIV of Act V of 1861 *(for the regulation of Police)*.

CHAPTER XXI. Ss. 316—317.

Of the Maintenance of Wives and Children.

The Agra Sudder Court and the Judicial Commissioners of the Punjab and of the Central Provinces have ruled that European British subjects come under the operation of Chapter XXI, such cases not being trials. [See Section 25].

Magistrate may make order for maintenance of wives and children.

316. If any person having sufficient means, neglects or refuses to maintain his wife or any legitimate or illegitimate child unable to maintain himself, it shall be lawful for the Magistrate of the District* or other Officer exercising the powers of a Magistrate,† upon due proof thereof, to order such person to make a monthly allowance for the maintenance of his wife or such child at such monthly rate, not exceeding fifty Rupees in the whole, as to the Magistrate* or other Officer as aforesaid† shall seem reasonable; and if such person shall wilfully neglect to comply with the order, the Magistrate or other Officer as aforesaid may, for every breach of the order, by warrant, direct the amount due to be levied in the manner‡ provided for levying fines; or may order such person to be imprisoned with or without hard labour for any term not exceeding one month.

* Ss. 14 18.

† S. 16.

‡ S. 61.

Enforcement of order.

Proviso.

Provided that if such person offer to maintain his wife on condition of her living with

CH XXLXXII ss 317&318

him, and his wife shall refuse to live with him, it shall be lawful for the Magistrate or other Officer as aforesaid to consider any grounds of refusal stated by such wife; and he may make the order allowed by this Section notwithstanding such offer, if he shall be satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty. No wife shall be entitled to receive an allowance from her husband under this Section, if she is living in adultery, or if without any sufficient reason she refuses to live with her husband.

The Calcutta High Court [1089, 1863] quashed the order of a Magistrate requiring a man to pay a monthly allowance to a woman until the birth of his illegitimate child, and after its birth to contribute monthly towards its support The Court remarked that the law empowers a Magistrate to order maintenance to children, legitimate and illegitimate, against the father, and to wives against the husband; but not to unmarried women in a state of pregnancy.

There is no appeal against an order passed by a Magistrate under Section 316, but a Sessions Judge can always call for the record of such a case, and if he finds that the order is illegal, he can refer it under Section 434 to the High Court. *Id.* 328, 1864, also Judicial Commissioner, Punjab, 1863.

Application for reduction of allowance.

317. Any person ordered to pay a monthly allowance for the maintenance of his wife, or child, or both, under the provisions of the last preceding Section, may apply to the Magistrate from time to time for the reduction of such allowance, and on proof of an alteration in the circumstances of such person, his wife, or child, justifying such reduction, such Magistrate may make such reduction in the allowance ordered as he may deem fit.

CHAPTER XXII. Ss. 318—321.

Of Disputes relating to the Possession of Land or the Right of Use of any Land or Water.

* Ss. 14, 18

† S 16.

Magistrate how to proceed if any dispute concerning land, &c., is likely to cause breach of the peace.

318. Whenever the Magistrate of the District* or other Officer exercising the powers of a Magistrate† shall be satisfied that a dispute, likely to induce a breach of the peace, exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a

proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend his Court in person, or by agent within a time to be fixed by the Magistrate or other Officer as aforesaid, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute. The Magistrate or other Officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to enquire which party is in possession of the subject of dispute, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to be in such possession, to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

Party in possession to be continued until ousted by due course of law.

A Subordinate Magistrate cannot institute or adjudicate a case under Chapter XXII. 3, Agra, 98.

The Calcutta High Court [420, 1863] has ruled that disputes regarding shares in joint undivided property cannot be brought under Section 318.

A Magistrate cannot award possession of a share in rents or in parts of an estate, nor can he restore a person to possession, but he can only declare the person whom he finds in actual possession entitled to retain possession until ousted by due course of law, and forbid all disturbance of such possession in the meantime. *Id.* Ramjeebun Dóobey, February 1st, 1864. (The law regarding suits to recover possession of immoveable property of which a person has been dispossessed otherwise than by due course of law, is contained in Act XIV. of 1859, Section 15.) A Magistrate cannot decide as to possession of land without a formal enquiry under Section 318. *Id.* Durbaroo Paramanick, February 3rd, 1865.

The omission by a Magistrate to record a proceeding in a case under Section 318, Criminal Procedure, is not a mere informality in procedure, but renders his entire proceedings illegal. *Id.* Harvey, November 21st, 1865.

Without removing the case under Section 36 to his own file, the Magistrate of the District is not competent to issue orders with regard to a case under Section 318, in supercession of the orders of a duly empowered Magistrate. *Id.* Juggobundho Sircar, July 18th, 1865.

S. 318.

319. If the Magistrate* or other Officer as aforesaid* shall decide that neither of the parties is in possession, or shall be unable to satisfy himself as to which person is in possession of the subject of dispute, he may attach the subject of dispute, until a competent Civil Court shall have determined the rights of the parties or who ought to be in possession.

If previous possession cannot be ascertained, Magistrate may attach subject of dispute.

CH XXII. ss 320 & 321 —

The alteration between the present and the former law [Act IV. of 1840, Section 3,] should be noted Under Act IV. of 1840 it was necessary that, after making the attachment, the Magistrate should give information to the Collector, and it was enacted that, if the subject of dispute be land, the provisions of Reg. V. of 1827, regarding attachment by order of a Civil Court, shall apply to attachments by order of a Magistrate made under this Section.

These provisions have been repealed, and have not been re-enacted. Collectors have been forbidden by the Board of Revenue, Bengal, to act in the matter. On a reference made to them on the subject, the Calcutta High Court (200, 1866) has stated that there were no grounds for doubting the correctness of these orders.

Disputes concerning right of use of land or water.

320. If a dispute arise concerning the right of use of any land or water, the Magistrate* or other Officer as aforesaid* within whose jurisdiction the subject of dispute lies, may enquire into the matter, and if it shall appear to him that the subject of dispute is open to the use of the public, or of any person, or of any class of persons, the Magistrate or other Officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other Officer as aforesaid shall not pass any such order, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the enquiry, or in cases where the right of use exists at particular seasons unless such right has been exercised during the last of such seasons before the complaint.

* S. 318.

The stoppage of a public thoroughfare by the building of a house should be dealt with under Chapter XX., and not under Section 320. Calcutta High Court, Baroda Pershad Mustofee, January 15th, 1866.

Saving of powers of Collectors and Revenue Courts.

321. Nothing in this Chapter shall affect the powers of a Collector or a person exercising the powers of a Collector, or of a Revenue Court.

See Reg. (Bengal) VII. of 1822, S. 34.

CHAPTER XXIII. Ss. 322—354.

OF JURIES AND ASSESSORS.

These are public servants under cl. 5, Section 21, Penal Code.

S. 322.

Local Government by order to specify in what places trials to be by Jury.

322. The local Government may order that the trial of all offences or of any particular class of offences by any Court of Session* shall be by Jury in any District,† and such local Government may from time to time revoke or alter such order. Orders passed under this Section shall be published in the Government Gazette, and in such other manner as the local Government shall direct.

* S. 13.
† S. 18.

The Government of Bengal have ordered [January 7th, 1862,] that in the districts of the 24-Pergunnahs, Hooghly, Burdwan, Moorshedabad, Nuddea, Patna and Dacca, the trial by any Court of Session of any of the offences provided for by Chapters VIII. XI. XVI. and XVII. of the Indian Penal Code, shall be by Jury. These Chapters relate to offences against the public tranquillity: false evidence and offences against public justice: offences affecting the human body: offences against property. On May 27th, 1862, offences under Chapter XVIII. of the Indian Penal Code, *i. e.*, offences relating to documents and to trade or property marks, were added to the above list; and on October 13th, 1862, it was further extended by the addition of trials for abetments of, or attempts to commit, any of the above offences. In the province of Assam *all* trials in the Sessions Court are held by Jury. Government of Bengal, March 28th, 1862.

In Madras the Government has introduced the system of trial by Jury in the Sessions Courts of Chittoor, Cuddapah, Rajahmundry, Tanjore, Tranquebar, Cuddalore and Vizagapatam, but only for the following offences:

Theft, under Ss. 379, 380, 381, Penal Code.
Robbery or gang robbery, under Ss. 392-3-4-5, 397-8-9, 400-1-2.
Receiving stolen property, under Ss. 411-2-4.
House breaking, &c. 451-2-3-4-5-6-7-8-9, 461.

In the Presidency of Bombay trial by Jury has not been introduced; nor in others parts of British India beyond the Districts mentioned in the foregoing.

In the trial of cases in which offences are charged, some of which should be tried by Jury [Section 322], and others with the aid of Assessors [Section 324], it has been the practice in Session Courts in Bengal that the Judge should take the verdict of the Jury on the charges relating to offences which they are competent to try, and that he should then regard the Jurors as Assessors, and take their opinion [Section 324] on the other charges. In such a case both a statement of the Judge's direction to the Jury [Section 379] and the grounds of his decision should form part of the record. The Calcutta High Court has never expressed any opinion on this procedure, which has in several cases come before it as a Court of Appeal.

CH. XXIII. SS. 323 & 324.

* S. 13.

How the Jury is to be constituted for the trial of persons belonging to certain specified races.

323. Criminal trials before the Court of Session* in which a European (not being a British subject) or an American is the accused person or one of the accused persons, shall be by Jury; and in such case the Jury, if such European or American desire it, shall consist of at least one-half of Europeans (whether British subject or not) or Americans, if such a Jury can be procured. Provided that in any District† in which the local Government shall not have ordered that all trials or trials for all offences of the class within which the trial about to take place falls, shall be by Jury, such European or American may elect to be tried without Jury.

Proviso.

† S. 18.

For the mode of summoning and empannelling a Jury under this Section, see Section 349.

Sessions Judges are required by the Calcutta High Court [Cir. 4, 1865] in all cases in which Special Juries under Section 323 may have been empannelled, to record in English, before commencing the proceedings of the trial, the names of all the Jurymen in attendance at the Sessions, and, after the selection by lot, under Section 342, from among the persons who are to constitute the Jury in the particular case before the Court, they should mark the names of those selected. These papers should form part of the record of the case. If, in accordance with Section 343, any objection be raised to any Juror, the name of the objector, the nature of the objection, and the decision of the Court, should also be recorded. The verdict of the Jury should be stated on the paper on which the above details have been set forth.

‡ S. 13.

Trials before the Session Court with Assessors.

324. In a trial before the Court of Session‡ not by Jury, the trial shall be conducted with the aid of two or more Assessors as Members of the Court. The opinion of each Assessor shall be given orally and shall be recorded in writing by the Court, but the decision is vested exclusively in the Judge.

For the practice in Bengal regarding the trial of cases in which offences may be charged, some of which should be tried by Jury, and others with the aid of Assessors, see note to Section 322.

The following instructions were issued by the Calcutta High Court [Cir. 4, 1865] to all Sessions Judges:—

"The record of the opinion of such Assessor should appear at the commencement of the judgment of the Sessions Judge. It is not sufficient that this record should contain a mere verdict of guilty or not guilty, or proven or not proven: what the High Court requires is not only the result arrived at by each Assessor sitting on a Sessions trial, but if possible the reasons by which each Assessor arrived at that result, that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions."

How the Jury is to be constituted for the trial of other persons.

325. In a trial by Jury before the Court of Session* in which a person not belonging to the races specified in Section 323 shall be tried, at least one-half of the Jury, if the accused person desire it, shall consist of persons not belonging to either of such races.

* S. 13.

How the Jury is to be constituted when persons of both descriptions are jointly charged.

326. In any case before the Court of Session† in which a person not belonging to the races mentioned in Section 323 is charged jointly with a person belonging to one of those races, and such last mentioned person claims to be tried by a Jury consisting of at least one-half of Europeans or Americans, the person not belonging to either of such races shall, if he desire it, be tried separately.

† S. 13.

Number of which the Jury is to consist.

327. In trials by Jury before the Court of Session,‡ the Jury shall consist of five persons, or of such number, being an uneven number, and not being less than five or more than nine, as the local Government by any general order applicable to any particular District or to any particular classes of offences in that District shall direct.

‡ S. 13.

Seven has been fixed by the Government of Bengal as the number of all Juries under the Code of Criminal Procedure. Government Order 3173, December 28th, 1861.

Number of voices necessary to verdict.

328. If the Jury are unanimous in a verdict of guilty, the accused person shall be convicted. If the Jury shall consist of five persons and a majority of four find the accused person guilty, or if the Jury shall consist of seven persons and a majority of five find the accused person guilty, or if the Jury shall consist of nine persons and a majority of six find the accused person guilty, the accused person shall be convicted. If the Jury are unanimous in a verdict of not guilty, the accused shall be acquitted. If the Jury shall consist of five persons and a majority of four find the accused person not guilty, or if the Jury shall consist of seven persons and a majority of five find the accused person not guilty, or if the Jury shall consist of nine persons and a majority of six find the accused person not guilty, the accused person shall be acquitted, and the Judge shall not receive a verdict of acquittal unless it be unanimous or found by such majority as last aforesaid.

CH XXIII. ss 329-331.

Section 351 provides for cases in which there may be no verdict by reason of there not being such a majority of the Jurors as is required by the foregoing Section.

List of Jurors and Assessors.

329. The Collector of the District or other Officer exercising the powers of a Collector of a District shall, from time to time, prepare and make out in alphabetical order, a list of persons residing within ten miles from the place where trials before the Court of Session* are held, or within such other distance as the local Government may think fit to direct, who are in the judgment of the Collector or other Officer as aforesaid qualified from their education and character to serve as Jurors or as Assessors respectively. The list shall contain the name, place of abode, and quality or business of every such person; and if the person belongs to either of the races specified in Section 323, the list shall mention the race to which he belongs.

* s. 13

The Collector should apparently enter in the list of Jurors or Assessors, the names of all qualified persons residing within the prescribed limits except those who are by Ss. 333, 334, declared to be incapable of serving as such Persons exempted under S. 335 should claim such exemption and should not of necessity be excluded.

Publication of list.

330. Copies of such list shall be stuck up in the Office of the Collector or other Officer as aforesaid and in the Court-houses of the Magistrate of the District† and of the Chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside, and every such copy shall have subjoined to it a notice, stating that objections to the list will be heard and determined by the Collector or other Officer as aforesaid at a time and place to be mentioned in the notice.

† Ss. 14, 18.

Revision of list.

331. The Collector or other Officer as aforesaid shall at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not qualified in his judgment to serve as a Juror or as an Assessor, and insert the name of any person omitted therefrom, whom he deems qualified for such service. A copy of the revised list shall be signed by the Collector or other Officer as aforesaid and transmitted to the Court of Session. Any order of the Collector

or other Officer as aforesaid in preparing and revising the list shall be final.

Further revision of list.

332. The list so prepared and revised shall be again revised at least once in every year, and the list so revised shall be deemed a new list and shall be subject to all the rules* hereinbefore contained as to the list originally prepared.

* Ss. 330, 331.

See note to S. 329.

Jurors.

333. Except as hereinafter provided, all male persons between the ages of twenty-one and sixty, resident within the limits of the jurisdiction of the Court of Session,† shall be deemed capable of serving as Jurors and Assessors, and shall be liable to be summoned accordingly.

† S. 13.

Disqualifications.

334. The following persons are incapable of serving as Jurors or as Assessors in trials before the Court of Session,‡ namely :—

‡ S 13.

Persons who hold any Office in or under the said Court.

Persons executing any duties of Police or entrusted with any Police functions.

Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Collector, renders them unfit to serve on the Jury.

Persons who are afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving.

Persons who, by habit or religious vows, have relinquished all care of worldly affairs.

Section 333 would add to this list all persons under twenty-one years of age and above sixty.

There are certain other persons [See Section 344] who, though not disqualified, may be objected to as Jurors in any particular case.

Exemptions.

335. The following persons are exempt from the liability to serve as Jurors or as Assessors, namely :—

Judges and other Judicial Officers.

Commissioners and Collectors of Revenue or Customs.

All persons engaged in the Preventive Service in the Customs Department.

CH. XXIII. s. 336.

All persons engaged in the collection of the Revenue whom the Collector may think fit to exempt on the ground of official duty.

Chaplains and others employed in Religious Offices.

All persons in the Military service.

Surgeons and others who openly and constantly practise in the profession of Physic.

Persons employed in the Post Office and Electric Telegraph Departments.

Persons actually officiating as priests in their respective religions.

Persons exempted by Government from personal appearance in Court under the provisions of Section 22 of Act VIII of 1859 (*for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.*)

Person exempted is not bound to avail himself of his right of exemption.

The exemption from service given by this Section is a right of which each person exempted may avail himself or not. Nothing herein contained shall be construed to disqualify any such person, if he shall be willing to serve as a Juror or as an Assessor.

Collectors should include, in the lists of Jurors or Assessors prepared by them, the names of the above mentioned persons, leaving it to them to claim exemption or to serve.

* s 13.

Court to summon Jurors.

336. The Court of Session* shall ordinarily three days at the least before the time fixed for the holding of Sessions, cause the Magistrate to summon as many persons named in the said revised list as seem to the Court to be needed for trials by Jury and trials with the aid of Assessors at the said Sessions, the number to be summoned not being less than double the number required for any case about to be tried at such Sessions. The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them, and shall be specified in the precept to the Magistrate.

For the mode of summoning a Special Jury such as may be necessary under Section 223, see Section 349.

It is not necessary that a double set of Assessors should be summoned in each case about to be tried at the Sessions, but the Court

should cause the Magistrate to summon as many persons as are likely to be needed, not less than double the number required for one case. Madras High Court, 1863.

Form and service of summons.

337. Every summons to a Juror or Assessor shall be in writing,* and shall require his attendance as a Juror or Assessor at a time and place to be therein specified. The summons or a copy thereof shall be served on every Juror or Assessor personally. If the Juror or Assessor summoned be absent from his usual place of abode, the summons may be left for him there with some adult male member of his family residing with him. * S. 10.

Power of Court to summon another set of Jurors or Assessors.

338. The Court of Session† may direct Jurors or Assessors to be summoned at other periods than the period specified in Section 336, when the number of trials before the Court renders the attendance of one set of Jurors or Assessors for a whole Session oppressive, or whenever it may be found to be necessary. † S 13.

Service of summons to serve as Juror or Assessor on an Officer of Government

339. If any person summoned to serve as a Juror or Assessor, be an Officer of Government, the summons shall be transmitted to such person through the Head Officer of the Office in which he is employed, and the Court may excuse the attendance of such person, if it shall appear on the representation of such Head Officer that such person cannot serve as a Juror or Assessor without inconvenience to the public service.

Court may excuse attendance of a Juror or Assessor.

340. The Court of Session‡ may excuse any Juror or Assessor from attendance for reasonable cause. ‡ S 13.

List of names of Jurors or Assessors attending at each Session.

341. At each Session the Court shall cause to be made a list of the names of those who serve as Jurors or Assessors at such Session. The list shall be kept with the revised list of the Jurors and Assessors prepared under Section 331. A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this Section.

Jurors to be chosen by lot.

342. Whenever a trial by Jury is to be held, the persons who are to constitute the Jury shall be chosen by lot immediately before the commencement of the trial from the

Assessors to be selected by Judge.

Jurors who attend in obedience to the summons. If the trial is to be held with the aid of Assessors, the Judge shall select from the persons summoned to act as Assessors, two or more persons to assist him in such trial.

For the mode of empannelling a Special Jury, such as may be required under Section 323, see Section 349.

Names of Jurors to be called.

343 Before the commencement of a trial by Jury the names of the Jurors shall be called aloud, and upon the appearance of each Juror, the accused person shall be asked if he objects to be tried by such Juror. Any objection* may then be made to such Juror by the accused person or by the Government Pleader or other person appointed to conduct the prosecution, and the grounds of objection shall be stated. Any objection made to a Juror shall be decided by the Court, and the decision of the Court shall be final. If an objection be allowed, the place of such Juror shall be supplied by any other Juror in attendance in obedience to a summons, or if there be no such Juror present, then by any other person present in the Court whose name is on the list of Jurors, or whom the Court shall consider a proper person to serve on the Jury, provided no objection to such Juror or other person be made and allowed.

Objections.

* See S 344.

There is no provision made for the swearing in of Jurors or Assessors. Madras High Court.

"The same Jury, if not objected to, may try, or the same Assessors may aid in the trial of, as many accused persons successively as to the Court shall seem expedient." Section 347.

Grounds of objection.

344. Any objection taken to a Juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—

(1.) Any ground of disqualification within Section 334.

(2.) Standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused; being in the employment on wages of either of such persons; being plaintiff or defendant against either of such persons in any Civil suit, or having complained against

or having been accused by either of such persons in any Criminal prosecution.

(3.) Any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favor to, either of such persons.

Juror to understand the language in which evidence is given or interpreted.

345. The Judge shall not allow any person to serve on the Jury, unless such person understands the language in which the evidence is given or interpreted.

Foreman of Jury.

346. The Jury shall appoint one of their number to be Foreman. It shall be the duty of such Foreman to preside in the debates of the Jury, to deliver the verdict of the Jury, or ask any information from the Court that may be required by the Jury. If a majority do not agree in the appointment of a Foreman, he shall be named by the Court.

The same Jury or Assessors may try in succession several offenders

347. The same Jury, if not objected to, may try, or the same Assessors may aid in the trial of, as many accused persons successively as to the Court shall seem expedient.

View by Jury or Assessors

348. Whenever in the opinion of the Court it may be proper and convenient that the Jury or Assessors should have a view of the place in which the offence charged is said to have been committed, or of any other place in which any other transaction material to the enquiry in the trial took place, an order shall be made to that effect, and the Jury or Assessors shall be conducted in a body under the care of an Officer of the Court to the place which shall be shown to them by a person appointed by the Court, and it shall be the duty of the Officer not to suffer any other person to speak to or hold any communication with any of the Jury or Assessors, and they shall, when the view is finished, be immediately conducted back into Court

Mode of summoning and empannelling Jurors for a Jury constituted under Section 323.

349. When a trial is held in which the accused person or one of the accused persons is entitled to be tried by a Jury constitued under the provisions of Section 323 of this Act, the Court of Session* shall, three days at the least before the day fixed for holding such trial, cause to be summoned in the manner prescribed in

* s 19.

Section 336 such a number of Jurors of the races mentioned in Section 323 as is equal to the total number of Jurymen required for the trial, if so many of such races be on the Jury List of the District. The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons shall have been summoned for Jury trials at that Session. The names of the persons to be summoned shall be drawn by lot, excluding those who have served within six months, unless the number cannot be made up without them. From the whole number of persons returned, the Jurors who are to constitute the Jury shall be taken by lot in the manner prescribed in Section 342, until a Jury, containing the proper number of the races mentioned in Section 323, or a number approaching as nearly thereto as possible, has been obtained. The Jurors shall be liable to the same objections as any other Jurors. If a Jury containing the requisite number of the races mentioned in Section 323 be not obtained, the accused person may elect to be tried by the Judge with the aid of Assessors; otherwise he shall be tried by the Jury obtained by the means aforesaid.

If prior to finding any of the Jury be unable to proceed with the trial.

350. If, in the course of a trial by Jury at any time prior to the finding, any Juror shall, from any sufficient cause, be prevented from attending through the trial, or if any Juror shall absent himself, and it shall not be possible to enforce his attendance, a new Juror shall be added, or the Jury shall be discharged, and a new Jury empannelled, and in either case the trial shall commence anew.

Section 354 provides the penalty for the non-attendance of a Juror without lawful excuse.

Verdict of guilty by less than the specified majority of Jury.

351. In any trial by Jury, if the accused person is found guilty by a majority consisting of a less number of the Jury than is specified in that behalf in Section 328 of this Act, or if the accused person be found not guilty by a majority consisting of a less number of the Jury than is therein in that behalf specified, the Jury shall be discharged, and in any such case as aforesaid there shall be a new trial before a Jury consisting entirely

of other Jurors, and the accused person may be remanded or held to bail for such new trial. If, on any new trial by Jury, the accused person shall not be found guilty by a majority consisting of such a number as aforesaid, he shall be acquitted.

Four out of five, or five out of seven, or six out of nine are legal majorities under Section 328, according as the Jury may consist of five, seven, or nine persons.

When and how long Jury may retire for finding.

352. At the close of the trial, and after the Judge has summed up the evidence as hereinafter provided by Section 379 of this Act, the Jury may retire to consider their finding, and it shall be the duty of an Officer of the Court not to suffer any person to speak to or hold any communication with any member of such Jury. In any case in which a Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous, and if the Foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If, after such a period as the Judge shall consider reasonable, the Foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict.

In a trial for murder the Jury gave the following verdict, "we have no doubt that the prisoner killed Nuddee Ghose; we think Nuddee Ghose gave no provocation; but we do not think it murder, because the prisoner had no object in killing him." The Calcutta High Court held that this was clearly not such a verdict as could have been received, and that the Jury were properly directed by the Sessions Judge to reconsider their verdict. The Court further refused to question the subsequent verdict of the Jury convicting the prisoner of murder. Uckoor Ghose, December 30th, 1864. The same Court held that a Sessions Judge acted irregularly in directing the Jury to consider their verdict declaring certain prisoners guilty of theft, because he considered that from the evidence they were guilty of robbery. The Court ordered a fresh trial, remarking that the Jury were the sole Judges of the credibility of the evidence which would convert the theft into robbery, and, as they apparently disbelieved such evidence, their first verdict was proper and should have been accepted. Sakhawat Sheikh, January 23rd, 1865.

If either of the Assessors be unable to proceed with trial.

353. If, in the course of a trial with the aid of Assessors, at any time prior to the finding, any Assessor shall, from any sufficient cause, be prevented from attending through the trial, the trial shall proceed with the aid of the other Assessor or Assessors. If all the Assessors are prevented from attending through the trial,

CH. XXIV. SS 354 & 355.

the proceedings shall be stayed, and a new trial shall be held with the aid of fresh Assessors.

See following Section for the penalty for the non-attendance of an Assessor without lawful excuse.

Penalty for non-attendance of Juror or Assessor.

354. Any person summoned to attend as a Juror or as an Assessor, who shall without lawful excuse fail to attend as required by the summons, or having attended shall depart without having obtained the permission of the Court, shall be liable by order of the Court of Session* to a fine not exceeding one hundred Rupees, to be levied by the Magistrate of the District† by attachment and sale of any moveable‡ property belonging to such Juror or Assesssor within the jurisdiction of the Court making the order, or in default of recovery of the fine by such attachment and sale, such Juror or Assessor may be imprisoned in the Civil Jail for the space of fifteen days, if the fine be not sooner paid.

* S. 13.
† Ss, 14. 18.
‡ S 6.

CHAPTER XXIV. Ss. 355—358.

Of Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George.

In the Regulations, these officers are respectively termed Assistant or Joint Criminal Judges and Native Criminal Judges The change of designation is to be found in Act VII. of 1843 and Act XXIV. of 1836.

Criminal Jurisdiction and powers of punishment of Subordinate Judges and Principal Sudder Ameens.

355. The Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George shall continue to exercise under this Act, subject to the provisions of the Indian Penal Code, the Criminal jurisdiction which they are competent to exercise under any law for the time being in force, and shall have the same powers of punishment as are given by this Act to an Officer exercising the powers of a Magistrate.

The following are the unrepealed laws relating to Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George :—

Regulation II. 1827, Section 2.

Regulation VIII. 1827, Sections 2 and 14, clauses 1 and 2, and Section 4, except as regards the application of Regulation X. 1816 to Criminal trials. [See Schedule, Act XVII. of 1862.]

Regulation III. 1817, Section 3.

What cases Subordinate Magistrates may commit and what cases they may refer to Magistrate.

356. Subordinate Magistrates of the first* and second* class in the Presidency of Fort Saint George shall commit to the Court of Session† any persons charged with offences triable exclusively by that Court, or shall, under such orders as the Sudder Court‡ shall from time to time issue, either commit to the Subordinate Judges or Principal Sudder Ameens the cases of persons accused of offences triable by such Subordinate Judges or Principal Sudder Ameens, or refer such cases for the orders of the Magistrate§ of the District or other Officer exercising the powers‖ of a Magistrate. If the case be referred to the Magistrate of the District or other Officer as aforesaid, such Magistrate or other Officer shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

* S. 22.
† S. 13.
‡ S. 19.
§ Ss. 14, 18.
‖ S. 16.

Unless expressly excluded by law, every thing said or done by any person, if relevant, is evidence against him, although it may be the examination of an accused person recorded by a Subordinate Magistrate in a case referred by him to the Magistrate of the District. The meaning of Section 356 is that the Magistrate should not decide the case without a regular trial before himself. Madras High Court, 1863.

A Sessions Judge should not return to a Magistrate a case which the latter had full jurisdiction to decide. He should rather decide the case and point out to the Magistrate his error, for there is nothing in the law which authorizes a Sessions Judge to return a case to a Magistrate. *Id* 1863.

A Subordinate Magistrate, in a case to be referred by him, should prefer no charge against the accused person. *Id.* 1863.

Subordinate Magistrate after trial may refer to Magistrate of the District.

357. If in any case tried by a Subordinate Magistrate of the first* or second* class in the Presidency of Fort Saint George in which the accused person is found guilty, such Magistrate shall consider the offence established against the accused person to call for a more severe punishment than such Magistrate is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate† of the District or other Officer exercising the powers of a Magistrate, and the Magistrate of the District or other Officer as aforesaid shall pass such sentence or order in the case as he may deem proper and as shall be according to law. In any such case, the Magistrate or other Officer to whom the proceedings are submitted may examine the parties, and recall and examine any witness who shall already have given evi-

* S. 22.
† Ss. 14, 18.

CH. XXIV. XXV ss 358–359.

dence in the case, and he may call for or take any further evidence.

This Section is somewhat similar to Section 277.

Cases committed for trial before Subordinate Judges and Principal Sudder Ameens.

358. In cases committed for trial before the Subordinate Judges or Principal Sudder Ameens in the Presidency of Fort Saint George, they shall be guided by the rules contained in this Act* for the trial of cases before the Magistrate, which are hereby made applicable to such cases. The Subordinate Judges and Principal Sudder Ameens may commit any case to the Court of Session† in which the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Subordinate Judges or Principal Sudder Ameens are authorized to adjudge.

* See Ss 248–256

† S 13.

A Subordinate Judge or a Principal Sudder Ameen may commit to the Court of Session, without taking any further evidence, any case that may have been committed to them by a Magistrate, whenever it shall appear from a perusal of the evidence already recorded that the accused has been guilty of an offence calling for such punishment as the Court of Session can alone award. Madras High Court.

CHAPTER XXV. Ss. 359—380.

TRIALS BEFORE THE COURT OF SESSION.

Cognizance of offences by the Court of Session in original jurisdiction.

359. Except in the cases referred to in Section 172 of this Act, a Court of Session,‡ as a Court of original criminal jurisdiction, shall not take cognizance of any offence but upon a charge preferred by a Magistrate or other Officer specially empowered under this Act or under any other law to make commitments to such Court.

‡ S. 13.

In every part of India except in the Presidency of Fort Saint George only a Magistrate exercising the powers of a Magistrate [Section 16,] or Subordinate Magistrate specially empowered by Government [Section 38] can make commitments to the Court of Session. In the Presidency of Saint George Subordinate Magistrates of the first and second class have the power of committing to the Court of Session any persons charged with offences triable exclusively by that Court. [S 356.]

Section 172 enacts that "it shall be competent to a Court of Session to charge a person for any such offence" [i. e. any offence under Sections 161, 162, 164–171, 193—196, 199, 200, 205—211, 228, 463, 471, 475, 476, of the Indian Penal Code] "committed before it, or under the

own cognizance, if the offence be triable by the Court of Session exclusively, and to commit or hold to bail and to try such person upon its own charge. In such case the Court of Session shall have the same power of summoning and causing the attendance at the trial of any witnesses for the prosecution or for the defence which is vested in a Magistrate by this Act. Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial."

Every trial before Court of Session to be conducted by Governmet Pleader, &c

360. In every trial before a Court of Session* the prosecution shall be conducted by the Government Pleader or by some other Officer specially empowered in that behalf, and the complainant, if there be a complainant, shall be examined as a witness in the case. * S 13.

For the rules regarding Government Prosecutions in Bengal, see note to Section 231.

Postponement of trial.

361. A Court of Session† may direct the postponement of a trial, when it is satisfied that such postponement is proper and will promote the ends of justice. † S. 13.

The Calcutta High Court [170, 1862] has ruled that it was not necessary for a Sessions Judge to postpone the trial of a case committed to him until the decision by a Civil Court on appeal of a case in which the forged documents forming the basis of the criminal charge were uttered. The only question for his consideration was whether the committing officer had such jurisdiction to investigate the case as is required by law.

Commencement of trial.

362. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried. If the accused person plead guilty, the plea shall be recorded, and the accused may be convicted thereon.

Refusal to plead, or plea of claim.

363. If the accused person shall refuse to plead, or shall claim to be tried, the Court shall proceed to try the case, taking all the evidence that is forthcoming.

If the accused person plead guilty, it is not absolutely necessary to record the evidence for the prosecution [Calcutta High Court, 359, 1862]; but the Sessions Judge may record it, if he thinks proper. [*Id* 810, 1863.] The accused person should not be examined by the Sessions Judge *immediately* after he has been called upon to plead, if his plea be "not guilty" 3, Agra, 85.

Provisions relating to examination of parties, &c., in trials before Magistrate to be applicable to trials before Court of Session.

364. The provisions of Sections 195, 196, 197, 198, 199, and 200, of this Act, relating to the examination of parties and witnesses, the mode of recording evidence, and the correc-

CH. XXV. ss.365&366.

tion, attestation, and interpretation thereof in trials before the Magistrate, shall be applicable to trials before the Court of Session* under this Chapter.

* S. 13.

A sentence passed by a Court of Session was quashed and a new trial was ordered, because the evidence of the witnesses in the case had not been recorded in the presence of the accused persons, their depositions in the cases of other prisoners having been merely read over in the Sessions Court, and their identification of the persons then under trial recorded. Calcutta High Court, Gopal Chowbey, February 9th, 1863.

Sections 210, 211 apply to trials before Sessions Courts. By Section 210 it is enacted that "it shall be competent to the Court of Session at the time of trial to instruct the Magistrate in like manner [*i. e.* as in Section 209,] to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to any such offence [i. *e.* any offence specified, in Column 7 of the Schedule annexed to the Code of Criminal Procedure, as triable by the Court of Session] with the view of obtaining his or their evidence on the trial." Section 210 declares that "if it shall appear to the Court of Session at the time of trial that any person who shall have accepted an offer of pardon has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential or by giving false evidence or information, it shall be competent to such Court to direct the commitment of such person for trial for the offence in respect of which the pardon was tendered."

The Government of Bengal [August 6th, 1865,] ordered under Sections 196 and 364, that the evidence of witnesses in trials before the Courts of Session should be taken down by the Judge with his own hand and in his own vernacular language, unless he be prevented by any sufficient reason from taking down the evidence of any witness, in which case he should record the reason of his inability to do so, and should cause the evidence to be taken down in writing from his dictation in open Court.

Witness refusing to answer may be committed to custody.

365. If any witness shall refuse to answer any question which shall be put to him, and shall not offer any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer. In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of Section 163 of this Act.

See note to S. 192.

Examination of accused before the Magistrate to be evidence at the trial.

366. The examination of the accused person before the Magistrate shall be given in evidence at the trial. The attestation of the Magistrate shall be sufficient *primâ facie* proof of such examination, and such attestation shall be admitted without proof of the signature to it, unless the Court shall see reason to doubt its genuineness.

Proof of such examination.

For the examination of an accused person by a Magistrate, see Sections 202—205

Court may summon necessary evidence.

367. It shall be in the discretion of the Court, at any stage of a trial, to summon and examine any witness whose evidence it shall consider essential to the just decision of the case. The Court may also examine as a witness any person in attendance, although not summoned as a witness.

In concurrence with the Agra Sudder Court, the Judicial Commissioner of the Punjab has ruled that a Court of Session may direct further enquiry on any point on which the preliminary enquiry held by the Magistrate may appear to have been defective. A Sessions Judge can summon a witness directly or through the committing Magistrate, the latter course being preferable.

Evidence of medical witness.

368. The Court shall receive as *primâ facie* evidence the examination of a Civil Surgeon or other medical witness taken and duly attested by the Magistrate. Provided that it shall be competent to the Court to summon such Civil Surgeon or other Medical witness, if it shall see sufficient cause for doing so.

Magistrates should be required invariably to record the evidence of the Medical officer, before committing to the Court of Session any case regarding an offence affecting the human body [Chapter XVI, Penal Code]; for the omission to record this evidence might very possibly lead to the acquittal of an accused person in the Sessions Court, if through sickness, death, or unavoidable absence of the Medical officer, his attendance cannot be procured before that Court. Calcutta High Court, 42, 1865.

Examination of witness taken and attested by Magistrate when admissible.

369. The examination of a witness taken and attested by the Magistrate in the presence of the accused person may be given in evidence, if the witness be dead or the Court be satisfied that for any sufficient cause his attendance cannot be procured.

This power should be exercised with great caution and only under exceptional circumstances. It is preferable to adjourn [Section 377] the trial of heinous offences to secure the personal attendance of any important witnesses who may have absented themselves. Calcutta High Court. 233, 1862, and 1069, 1864.

Report of Chemical Examiner admissible in evidence.

370. Any document purporting to be a report from the Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any criminal trial or in any preliminary enquiry relating thereto, shall be received in evidence at a trial

CH. XXV. ss. 371-373.

* s. 13.

by the Court of Session,* if it bear the signature of such Examiner, and no proof of such signature or that the person signing holds such office, shall be requisite, unless the Court shall see reason to doubt the genuineness of the document.

Dying declaration.

371. The declaration of a deceased person, whether it be made in the presence of the accused person or not, may be given in evidence, if the deceased person at the time of making such declaration believed himself to be in danger of approaching death, although he entertained at the time of making it hopes of recovery.

It is well to note this Section in connection with Act II. of 1855, Section 29, which it no doubt supersedes. "Where dying declarations are evidence, they shall be received, if it be proved that the deceased was, at the time of making the declaration, and then thought himself to be, in danger of approaching death, though he entertained at the time of making it, hope of recovery."

A Magistrate recording a dying declaration should question the deponent as to whether he believes himself to be in danger of approaching death (Calcutta High Court, 454, 1865); but the omission of any such information would not render the deposition inadmissible, if it has been recorded in the presence of the accused. It would not be treated as a dying declaration, but it may under Section 369 be admitted as evidence. Calcutta High Court 903, 1865. The Agra Sudder Court (22nd May, 1863) held that as a person was dangerously wounded and obviously dying, his declaration having been made only six hours previous to his decease, it may reasonably be presumed that, at the time of making it, he believed himself to be in danger of approaching death. The declaration was accordingly received as evidence.

Defence

372. When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence.

There is nothing in the law which prohibits a written defence. If presented, such should be received. 2, Agra, 356. Sessions Judges should put on record any statement that the accused person may make, on his being called upon to enter upon his defence, and if no statement be made by the accused, the fact should be noted by the Judge. *Id.* Cir. 6, 1863.

When accused person may be examined.

373. The Court, at the close of the evidence on behalf of the accused person if any evidence is adduced on his behalf, or otherwise at the close of the case for the prosecution, may put any question to the accused person which it may think proper. It shall be in the option of the accused person to answer such question.

Any questions put to an accused, and all answers given by him, should be recorded by the Judge. Agra Sudder Court, Cir. 6, 1863.

Section 246 enacts that "if the amendment or alteration" [of a charge] "is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accussed person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and after hearing his defence, may further adjourn the trial, to admit of the appearance of any witness, whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence." Although an accused person is not, of right, except as thus provided, entitled to have a fresh witness summoned, still under Section 367 it is "in the discretion of the Court, at any stage of the trial, to summon and examine any witness whose evidence it shall consider essential to the just decision of the case. The Court may also examine as a witness any person in attendance, although not summoned as a witness."

When accused may address the Court.

374. The accused person or his Counsel or Agent may, at his option, address the Court at the close of the case for the prosecution, or at the close of any evidence that may be adduced on his behalf, or if any question shall be put to the accused person by the Court, after such question shall have been so put.

"Agent." This evidently refers to Section 432, which enacts that "every person charged before any Criminal Court with an offence may of right be defended by Counsel or authorised Agent."

If he be not a Pleader or Mookhtear duly qualified under Act XX. of 1865, the permission of the Judge is necessary for the employment of such a person. Act XX. of 1865, Section 40.

Witness for the defence.

375. The accused person shall be allowed to examine any witness not previously named by him if such witness be in attendance, but he shall not be entitled of right to have any other witness summoned than the witnesses named in the list delivered to the Magistrate by whom he was committed or held to bail for trial, except as provided in Section 246 of this Act.

Prosecutor's right of reply.

376. If any evidence is adduced on behalf of the accused person, or if he answers any question put to him by the Court, the prosecutor, or the Counsel or Agent for the prosecution, shall be entitled to a reply.

See note to S. 374.

Adjournment.

377. The Court may in its discretion, from time to time, adjourn the trial as may be necessary.

The Calcutta High Court [170, 1862] declared that it was not necessary for a Sessions Judge to postpone the trial of a case until the decision

CH. XXV. ss. 378, 379. — by a Civil Court on appeal of a case in which the forged documents forming the basis of the criminal charge were uttered. The Court held that the only question for consideration was, whether the committing officer had such jurisdiction to investigate the case as is required by Law. The same Court [795, 1865,] issued similar instructions in a case of intentionally giving false evidence under Section 193, Penal Code.

Jury or Assessors to attend at adjourned sitting.

378. In the event of the adjournment of a trial by Jury or with the aid of Assessors, the Jury or Assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial; and any Juror or Assessor who shall without lawful excuse fail so to attend, shall be liable to the penalty* prescribed in Section 354 of this Act, and such penalty shall be enforced in the manner therein prescribed.

* Fine up to 100 Rs.

In the event of a Juror or Assessor being absent, the Court should proceed as laid down in Section 350, or 353.

Of verdict of Jury.

379. In a trial by Jury, the Judge shall sum up the evidence on both sides, and the Jury shall then deliver their finding upon the charge. A statement of the Judge's direction to the Jury shall form part of the record. In trials not by Jury, the ground of the Judge's decision shall be recorded.

In the trial of cases in which offences are charged, some of which should be tried by Jury [Section 322] and others with the aid of Assessors [Section 324], it has been the practice in Sessions Courts in Bengal that the Judge should take the verdict of the Jury on the charges relating to offences which they are competent to try, and that he should then regard the Jurors as Assessors and take their opinion [Section 324] on the other charges. In such a case both a statement of the Judge's direction to the Jury, and the ground of his decision, should form part of the record. The Calcutta High Court has never expressed any opinion on this procedure, which has in several cases come before it as a Court of Appeal.

"At the close of the trial, and after the Judge has summed up the evidence as hereinafter provided by Section 379 of the Act, the Jury may retire to consider their finding, and it shall be the duty of an officer of the Court not to suffer any person to speak to, or hold any communication with any member of such Jury. In any case in which the Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous, and if the Foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If, after such period as the Judge shall consider reasonable, the Foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict." Section 352.

Every person charged with an offence who is declared not guilty is entitled to acquittal. The Calcutta High Court [348, 1863,] held that a Sessions Judge acted irregularly in discharging certain persons, without first obtaining the verdict of the Jury acquitting them.

Acquittal or conviction.

380. If the accused person is acquitted, the Court shall record a judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence upon him according to law. Provided that if the Court pass sentence of death, the sentence shall not be executed without the confirmation of the Sudder Court.* If the accused person shall be convicted of an offence which by the Indian Penal Code is punishable with death, and the Court shall sentence such person to any punishment other than death, the Court shall state the grounds upon which it remitted the punishment of death in the statement of trials to be periodically submitted to the Sudder Court,* as hereinafter required, under the head of "Sentences passed upon the accused persons."

* S. 19.

For the rules regarding the finding, judgment and sentence, see the following Chapter.

A Sessions Judge is bound to pass some sentence, however slight, on a person duly convicted. He has no authority merely to "warn and discharge" a convict, as the power of remitting sentences rests solely with Government [Section 54.] Calcutta High Court, 564, 1865.

If a Sesions Judge find that a prisoner is not guilty of an offence, he should record a formal finding of acquittal, and order his discharge. He should not refuse to discharge a prisoner, because he considers that security for future good conduct should be taken by the Magistrate. 1, Bombay, 92.

A Sessions Judge should not pass a light or nominal sentence, because he considers that the verdict of a Jury is erroneous. It is rather his duty to consider what is a proper sentence for the offence of which the Jury have convicted the prisoner. If he has strong reasons for dissenting from such verdict in any case, he should, after passing sentence, make special reference to the Court for the orders of Government under Section 54, Criminal Procedure. Calcutta High Court, 677, 1865.

There being a deliberate attempt to take life proved against a prisoner convicted of murder, the Calcutta High Court [1095, 1864,] informed the Sessions Judge that he should have passed sentence of death. The mere absence of previous ill-feeling and apparent motive do not form sufficient grounds for remitting capital punishment on a man convicted of the murder of his wife. Calcutta High Court, 39 1865. Nor is it proper to remit that punishment merely because there were no eye-witnesses to the murder. Under such a rule no sentences of capital punishment would ever be passed on any persons convicted of murder on circumstantial evidence. *Id.* 900, 1865.

*The Calcutta High Court requires (Cir. March 11th, 1863) that in all cases tried by Jury, Sessions Judges shall, in the periodical statements submitted by them, state whether such verdict has their concurrence, and whether in their opinion the evidence in the case warranted the particular finding.

CHAPTER XXVI. ss. 381—387.

FINDING, JUDGMENT, AND SENTENCE.

CH. XXVI. ss.381&382. *s. 11.

What the judgment is to specify.

381. When the trial in any Criminal Court* is concluded, the Court, in passing judgment, if the accused person be convicted, shall distinctly specify the offence of which, and the Section of the Indian Penal Code under which he is convicted; or if it be doubtful under which of two Sections the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to Section 72 of the said Code.

Section 72, Penal Code, declares that in such a case "the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all."

Form of finding and sentence.

382. The finding and sentence shall be recorded in one of the following forms, or to the same effect:—

The finding should correspond with the charge. Calcutta High Court, 344, 1865. A translation should invariably be recorded. 1, Bombay, 17 "When any person shall be sentenced to transportation, the Court passing the sentence shall not specify in its sentence the place to which such person shall be sent for the purpose of undergoing that sentence." Section 50. "When a person shall be sentenced to death, the sentence shall direct that such person be hanged by the neck until he is dead." Section 53.

In trials by Jury:—

When the Jury are unanimous:

The Jury are unanimous in finding that Z is guilty of the offence specified in the charge, namely, that Z has waged war against the Queen, and has thereby committed an offence punishable under Section 121 of the Indian Penal Code; and the Court directs that the said Z be [*sentence.*]

2*nd.* The Jury are unanimous in finding that Z is not guilty of the offence specified in the charge, namely, that Z has waged war against the Queen, and has thereby committed an offence punishable under Section 121 of the Indian Penal Code; and the Court directs that the said Z be discharged.

When the Jury are not unanimous, but such a majority as is required by Section 328 of this Act concur in finding the accused guilty:

3rd. A majority (stating the number, consisting of four out of five, or five or six out of seven, or six, seven, or eight out of nine, as the case may be) find that Z is guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 of the Indian Penal Code. The Court directs that the said Z be [*sentence.*]

When the Jury are not unanimous, but such a majority as is required by Section 328 of this Act concur in finding the accused not guilty:

4th. A majority of the Jury (stating the number, as above,) find that Z is not guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 of the Indian Penal Code. The Court directs that the said Z be discharged.

When the Jury, or such a majority as is required by Section 328 of this Act, concur in finding the accused guilty of an offence, but are doubtful under which of two heads of a charge the offence falls:

5th. The Jury, or a majority of the Jury (stating the number, as above,) find that Z is guilty either of the offence specified in the first head of the charge or of the offence specified in the second head of the charge, namely, that Z has either committed theft and has thereby committed an offence punishable under Section 379 of the Indian Penal Code, or that he has committed criminal breach of trust and has thereby committed an offence punishable under Section 406 of the said Code. The Court directs that, under the provisions of the above-mentioned Sections, and the provisions of Section 72 of the Indian Penal Code, the said Z be [*sentence.*]

When a majority less than the number required by section 328 of this Act find the accused guilty:

6th. A majority of the Jury (stating the number, as above,) find that Z is guilty of the offence specified in the charge, namely, that he has committed &c., &c.,

CH. XXVI. s. 382.

the Court directs that the Jury be discharged, and that there be a new trial.

A similar form shall be followed if a verdict of not guilty is found by a majority less than is required by Section 328 of this Act.

If the finding be on a second trial, and a majority less than is required by Section 328 of this Act, find the accused guilty:

7th. A majority of the Jury (stating the number, as above,) find that Z is guilty of the offence specified in the charge, namely, that he has committed &c., &c., This being a second trial under Section 351 of the Code of Criminal Procedure, the Court directs that the said Z be discharged.

In trials with Assessors:

9th. The Court, concurring with the Assessors (or one or more of the Assessors), finds that Z is guilty of the offence specified in the charge, namely, that Z has committed the offence of rioting and has thereby committed an offence punishable under Section 147 of the Indian Penal Code; and the Court directs that the said Z be [*sentence.*]

10th. The Court, differing from the Assessors, finds that Z is not guilty of the offence specified in the charge, namely, that Z has committed the offence of rioting and has thereby committed an offence punishable under Section 147 of the Indian Penal Code; and the Court directs that the said Z be discharged.

The following rules were circulated by the Calcutta High Court, [Circular 16, 1864,] for the guidance of all officers subordinate to them.

1st. When *all* the facts in evidence form portion of *one* entire offence, a verdict should be entered up, and sentence passed, for that offence only; and though a portion of the *same facts* would, if they stood alone, constitute a second offence, a verdict of "not guilty" should be entered up on any separate charge for the minor offence.

2nd. For instance, when the chief offence charged and proved by the evidence is theft, the fact of the stolen property being found in the possession of the offender should be considered as a portion of the evidence by which the chief offence is proved; and a verdict of "not guilty" should be entered up on the charge of dishonestly receiving or retaining such property.

3rd. If a portion of the facts in evidence constitute *one* offence, and another and *distinct* portion constitute a *second separate and distinct offence*, under the Penal Code, a verdict on each charge should be entered up and a substantial sentence passed on the principal offence, and a light one or none on the second offence charged; or a substantial sentence, if necessary, on each offence: the second sentence to commence on the expiry of the first The Code of Criminal Procedure does not recognize concurrent or cumulative sentences.

4*th.* Such, for instance, would be the course to be pursued when there is a conviction for rape and assault, and subsequent imprisonment, or for forgery of a Bill of Exchange, and for subsequent perjury in swearing in a Court of Justice that it is a genuine document.

11*th.* The Court, concurring with one of the Assessors, finds that Z is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge, namely, that Z has either committed theft and has thereby committed an offence punishable under Section 379 of the Indian Penal Code, or that he has committed criminal breach of trust and has thereby committed an offence punishable under Section 406 of the Indin Penal Code; and the Court directs that, under the provisions of the abovementioned Sections and the provisions of Section 72 of the Indian Penal Code, the said Z be [*sentence.*]

In trials upon a formal charge, without Jury or the aid of Assessors:

12*th.* The Court finds that Z is guilty of the offence specified in the charge, namely, that Z has committed theft and has thereby committed an offence punishable under Section 379 of the Indian Penal Code; and the Court directs that the said Z be [*sentence.*]

13*th.* The Court finds that Z is not guilty of the offence specified in the charge, namely, that Z has committed theft and has thereby committed an offence punishable under Section 379 of the Indian Penal Code; and the Court directs that the said Z be discharged.

In trials in which no formal charge has been prepared:

14*th.* The Court finds that Z has used criminal force and has thereby committed an offence punishable under Section 353 of the Indian Penal Code, and directs that the said Z be [*sentence.*]

15*th.* The Court finds that the complaint of assault is not proved, acquits Z, and directs that he be discharged.

Execution of sentence of Court in cases referred to the sudder Court for confirmation of sentence.

383. In cases referred by the Court of Session* for the confirmation of a sentence by the Sudder Court,† the proper Officer of the Sudder Court† shall, without delay, after the order of confirmation or other order has been made by the Sudder Court,† transmit a copy of the order under the seal of the Sudder Court,† and attested with his official signature, to the Court

* S. 13.

† 19.

CH XXVI ss. 384–386.

of Session,* which, if the sentence be confirmed, shall immediately issue a warrant to the Magistrate or other Officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or in the case of any other order, shall cause such order to be carried into effect.

* S 13.

The procedure of the Sudder Court as a court of reference is laid down in Chapter XXXVIII. Sections 398—401.

The "other order" referred to, would be an order either for a new trial, or for an acquittal [Section 399], or for further enquiry and the taking of additional evidence [Section 400], or for the offer of conditional pardon to one or more of the parties concerned [Section 210].

Court of Session to direct warrant to District Magistrate.

384. In cases tried by the Court of Session,† the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the Magistrate of the District‡ in which the trial was held, or to such other Officer as aforesaid.

† S 13.

‡ Ss. 14, 18.

"Other Officer as aforesaid," *i. e.*, other Officer in charge of the Jail. S. 383.

"When any person shall be sentenced to transportation, the Court passing the sentence shall not specify in its sentence the place to which that person shall be sent for the purpose of undergoing that sentence." Section 50.

The Sessions Judge should fix the time and place for carrying out sentences of death, and should give orders regarding the disposal of the corpses of executed convicts. Calcutta High Court, 1863.

There should be no delay in returning the warrant, duly endorsed, when a sentence has been fully executed or the convict has died. *Id.* Cir. June 8th, 1863.

Execution of sentence under the two last foregoing Sections.

385. Upon the receipt of a warrant under either of the last two preceding Sections, the Magistrate or other Officer as aforesaid§ shall cause the sentence to be executed, and shall return the warrant, when the sentence has been fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

§ S 383

Warrant of commitment in cases of imprisonment.

386. In every case of imprisonment under the sentence of the Sudder Court‖ or of a Court of Session,¶ the Magistrate or other Officer as aforesaid[1] shall issue his warrant to the jailor, stating the offence of which the accused person has been convicted, and the period during which he is to be imprisoned, and the nature of the imprisonment. In every case of imprisonment under the sentence of any other Court, the Court

‖ S 19

¶ S 13

1 S 383.

passing the sentence shall issue its warrant to the jailor, and the warrant shall contain the same particulars and be to the same effect.

The term of imprisonment should be calculated from the date on which the sentence was passed, not from that of the prisoner's arrival at the Jail, but the period for which a sentence may be suspended, during appeal, is not to be reckoned in calculating the term of imprisonment, if the appeal be rejected Madras High Court.

Transmission of periodical calendars of trials by Court of Session

387. The Court of Session* shall transmit to the Sudder Court† such periodical statements or calendars of trials held by such Court as the Sudder Court† shall prescribe, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

* s. 13.
† s. 19.

CHAPTER XXVII. ss. 388—397.

OF LUNATICS.

Procedure in case of accused person being lunatic

388. When any person who is charged with an offence shall appear to the Magistrate having jurisdiction to be of unsound mind and incapable, in consequence, of making a defence, the Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District or some or other Medical Officer, and thereupon shall examine such Civil Surgeon or other Medical Officer, and shall reduce the examination into writing; and if the Magistrate shall be of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

The words "having jurisdiction" apply equally to preliminary enquiries as to trials To proceed with a charge against a lunatic, either in a preliminary enquiry before a Magistrate, or on trial before a Sessions Judge, is contrary to the Code of Criminal Procedure, for Section 194 presumes that the accused, in whose presence the complainant and his witnesses are to be examined, and who is entitled to cross examine them, is at the time at which those acts are done *compos mentis* Calcutta High Court, 476, 1865 A person appearing of unsound mind and incapable of making his defence cannot, while in that condition, be put on his trial, or be acquitted of the offence with which he is charged. Agra Sudder Court, Circular 9, 1863.

CH. XXVII. ss 389 & 390.

Procedure in case of person committed before a Court of Session being lunatic.

* s 13.

389. If any person who shall be committed for trial before a Court of Session,* shall at his trial appear to the Court to be of unsound mind and incapable of making his defence, the Court shall in the first instance try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence, and thereupon the trial shall be postponed.

The Bombay High Court instructed a Sessions Judge that on entertaining doubts as to the sanity of the accused person, he should not merely have put questions to him, but should have tried the fact of such unsoundness of mind by examining the Civil Surgeon or some other medical officer, and by taking such evidence as might have been procurable from the village in which the accused resided, with the view of ascertaining whether he had, at any time prior to the commission of the crime, exhibited symptoms of insanity. 1, Bombay, 33. The Magistrate or Sessions Judge should report such a case *direct* to Government. Agra Sudder Court, Circular 91, 1863.

Release of lunatic pending investigation or trial.

† s 13.

390. In any case in which an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session,† as the case may be, if the offence be bailable, may release such person on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the accused person shall be kept in safe custody in such place as the local Government to which the case shall be reported shall direct.

The following rules regarding the conveyance of lunatics to Asylums have been issued by the Government of Bengal:—

1. For persons of unsound mind who need to be sent to the Lunatic Asylums of the Lower Provinces, wherever practicable, water shall be preferred to land carriage.

2. No Lunatic shall be sent from a Jail, or other place in which he is temporarily confined for safe custody, to a Lunatic Asylum, when he is in an unfit state to travel with safety, either from ordinary bodily disease, or during the acute stage of the form of mental aberration under which he is is laboring.

3. Every Lunatic who is unable to take care of himself, or to attend to his personal wants, shall be provided with the attendance, clothing, and food, necessary for his safety and protection, and the strictest injunctions shall be given to the persons in charge of such Lunatics to see that they do not suffer injury from exposure to weather.

want of food, the neglect of personal cleanliness, or any other cause whatever.

4. Every Lunatic in transit to an Asylum shall be provided with at least two complete suits of clothing and with an extra blanket, so as to admit of their being changed and washed in case of necessity. The most stringent orders shall be given to the persons in charge of a Lunatic that all fouled clothes shall immediately be changed and cleansed before they are again worn.

5. Proper provision for cooking and supplying the food of Lunatics in transit shall be made by the Officer transmitting them.

6. Every Lunatic prior to transfer to an Asylum shall be carefully examined by the Medical Officer who furnishes the certificate of unsoundness of mind, and the Medical Officer referred to shall certify that all the abovementioned provisions for the safe custody of the Lunatic have been made, and that he is in a fit state to travel. This certificate shall be transmitted by post to the Officer in charge of the Asylum to which the Lunatic is sent, and a duplicate copy of it shall be given to the person sent in charge of the Lunatic.

7. The Officer in charge of the Asylum shall, on the arrival of a Lunatic, see that the above orders have been strictly observed, and that the Lunatic has been properly cared for in transit. Should there be any evidence of carelessness or other breach of these Rules, the matter shall at once be reported in writing to the Magistrate of the District for the information and orders of the Government.

Resumption of investigation of case.

391. Whenever any investigation or trial of a case shall be postponed under Section 388 or Section 389 of this Act, the Magistrate or Court of Session,* as the case may be, may at any time resume the investigation or trial, and require the accused person, if detained in custody, to be brought before such Magistrate or Court, or if the accused person has been released on security, may require his appearance. Until such investigation or trial is completed, the case shall be considered as pending before the Magistrate or Court of Session,* and shall be included in any register of pending cases kept by such Magistrate or Court. The surety of such person shall be bound at any time to produce him to any Officer whom the Magistrate or Court of Session may appoint to inspect him, and the certificate of such Officer shall have the same effect as the certificate of an Inspector of Jails or the Visitors of Lunatic Asylums granted under Section 395 of this Act.

* S. 13.

By Section 395, cl. 2, such a certificate may be received as evidence. The report of the Officer appointed under the foregoing Section to inspect the Lunatic under trial in a similar manner may be received as evidence and may be acted upon.

"Investigation or trial." Investigation no doubt refers to the enquiry of a Magistrate under Chapter XIV. preliminary to commitment

 for trial by a Court of Session. Trial includes trials before a Magistrate having jurisdiction and before a Court of Session.

Procedure on accused appearing or being brought before Magistrate or Court of Session

* S. 13.

392. If, when the accused person appears or is again brought before the Magistrate or the Court of Session,* as the case may be, it shall appear to such Magistrate or Court that the accused person is in a fit state of mind to make his defence, the investigation shall proceed, or the accused person shall be put on his trial, as the case may require. If it shall appear that the accused person is still of unsound mind and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of Section 388 or Section 389 of this Act.

Procedure in case of acquittal of accused person on the ground of being lunatic.

393. Whenever any person is acquitted, upon the ground that at the time at which he is charged to have committed an offence he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged or that he was doing what was wrong or contrary to law, the finding shall state specially whether he committed the act or not.

By Section 84, Penal Code, "nothing is an offence which is done by a person, who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

The terms of the law should be strictly followed in recording the finding in a case falling under Section 393, Criminal Procedure. A Judge should not find an accused person guilty of the offence charged, and then acquit him on the ground of insanity. Calcutta High Court, 22, 1864.

The insanity of the accused person at the time of his committing the offence, should not be tried as a preliminary point. It should be determined at the conclusion of the trial. 1, Agra, 53.

Person so acquitted to be disposed of by Magistrate or Court of Session for safe custody, &c.

† S 13.

394. Whenever such finding shall state that the accused person committed the act charged, the Magistrate or Court of Session† before whom the trial was held, shall, if the act charged would, but for the incapacity found, have amounted to an offence, order such person to be kept in safe custody, in such place and manner as to the Magistrate or Court of Session† shall seem fit, and shall report the case for the order of the local Government. The local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

A Sessions Judge tried and acquitted an accused person upon the ground, that, "at the time at which he was charged to have committed the offence, he was by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law" [S 393], notwithstanding that at the time of trial he was incapable of making his defence. The Calcutta High Court held that these proceedings were altogether irregular, and quashed them, directing the Judge to proceed under Sections 389, 390, Criminal Procedure. Mukhun Chowdry, September 9th, 1865 Magistrates and Sessions Judges should report such cases *direct* to Government. Agra Sudder Court, 9, 1863.

Lunatics to be visited and reported on by Inspector of Jails, &c.

395. *Clause* 1. When any person is confined under the provisions of Section 390 or Section 391 of this Act, it shall be lawful for the Inspector of Jails if such person is confined in a Jail, or for the Visitors of Lunatic Asylums or any two of them if such person is confined in a Lunatic Asylum, to visit such person in order to ascertain his state of mind; and such person shall be visited once at least in every twelve months by such Inspector of Jails or by two of such Visitors as aforesaid, who shall make a special report as to the state of mind of such person.

If lunatic confined under Section 390 is reported capable of making his defence.

Clause 2. If such person is confined under Section 390 of this Act, and such Inspector of Jails or such Visitors of Lunatic Asylums as aforesaid shall report that in his or their opinion such person is capable of making his defence, such person shall be taken before the Magistrate or Court of Session,* as the case may be, at such time as such Magistrate or Court of Session* shall appoint; and such Magistrate or Court shall deal with such person under the provisions of Section 392, and may receive as evidence the certificate of such Inspector of Jails or such Visitors of Lunatic Asylums as aforesaid.

* S 13.

If lunatic confined under Section 394 is declared capable of being discharged.

Clause 3. If such person shall be confined under the provisions of Section 394 of this Act, and such Inspector of Jails or such Visitors of Lunatic Asylums as aforesaid shall certify that in his or their judgment such person may be discharged without danger of his doing injury to himself or to any other person, the local Government shall thereupon either order his discharge, or order such person to be transferred to a public Lunatic Asylum if he has not been

already sent to such an Asylum, and shall within six months appoint a Commission consisting of a Judicial Officer not below the grade of a Sessions Judge, and two Medical Officers whereof the Chief Medical Officer attached to the Lunatic Asylum shall be one. The said Commission shall make formal enquiry into the state of mind of such person, taking such evidence as shall be necessary; and if they consider that he can be set at liberty without danger to himself or to any other person, he shall be discharged.

Person under sentence of imprisonment, appearing to be of unsound mind, may be removed to Lunatic Asylum, and kept till he shall again become of sound mind, &c.

396. Whenever it shall appear to the local Government that any person, imprisoned by the sentence of any Court or Magistrate, is of unsound mind, the local Government, by an order which shall set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a Lunatic Asylum, there to be kept and treated as the local Government shall direct during the remainder of the term of imprisonment ordered by the sentence, or if it shall be certified by a Medical Officer that it is necessary for the safety of the prisoner or others that he should be detained under care and treatment, then until he shall be discharged according to law; and when it shall appear to the local Government that such person has become of sound mind, the local Government, by an order directed to the person having charge of him, shall remand such person to the custody from which he was removed, if then still liable to be kept in custody, or, if not, shall order him to be discharged out of custody. The provisions of Section IX of Act XXXVI of 1858 (*relating to Lunatic Asylums*) shall apply to persons confined in a Lunatic Asylum under this Section after the expiration of the imprisonment ordered by the sentence. The period during which a person shall be confined in a Lunatic Asylum shall be reckoned as part of the period of imprisonment ordered by the sentence.

Act XXXVI. of 1858, Section 9, enacts that "it shall be lawful for three of the Visitors of any Asylum, of whom one shall be a Medical Officer, by writing under their hands, to order the discharge of any person detained in such Asylum. When such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer."

When lunatic may be delivered over to the care and custody of a relative or friend.

397. Whenever any relative or friend of any person detained under the provisions of Section 394 of this Act is desirous that such person shall be delivered over to his care and custody, the local Government, upon the application of such relative or friend and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may make an order that the person so detained may be delivered to such relative or friend. Whenever such person shall be so delivered over, it shall be upon condition that he shall be subject to the inspection of such Officer as the local Government shall think necessary to appoint, and at such times as such Government shall direct. The provisions of Section 395 shall apply to persons detained under the provisions of this Section, and the certificate of the Inspecting Officer appointed under this Section shall have the same effect as a certificate of an Inspector of jails or the Visitors of Lunatic Asylums under the said Section.

This Section applies only to the care of a person detained under Section 394, who may have committed an act, which but for his incapacity under Section 54, Penal Code, would have amounted to an offence.

CHAPTER XXVIII. ss. 398—401.

SUDDER COURT AS A COURT OF REFERENCE.

Constitution of Court for hearing case referred for confirmation of sentence.

398. A case referred to a Sudder Court* by a Court of Session† for confirmation of a sentence of death shall be heard by a Court constituted by two or more Judges of such Sudder Court.*

* s. 19
† s. 13.

Act XV. of 1862, Section 2, declares that, "when the Sudder Court in any part of the Territories to which the Code of Criminal Procedure has been or shall be extended shall consist of a single Judge. Such Judge shall have all the powers of two or more Judges of the Sudder Court under Sections 398, 401, and 420 of the said Code."

By Section 22 a Court of Session is declared competent to pass sentence of death (subject to confirmation by the Sudder Court.)" Section 53 requires that, "when any person shall be sentenced to death, the sentence shall direct that such person be hanged by the neck until he is dead."

CH. XXIVII. ss. 399,400.

Power of Sudder Court to confirm, reverse, &c., sentence.

399. In any case so referred, the Sudder Court* may either confirm the sentence or pass any other sentence warranted by law, or may annul the conviction and order a new trial on the same or an amended charge. If the case shall have been tried by the Court of Session† with the aid of Assessors, it shall further be competent to the Sudder Court‡ to acquit the accused person and order his discharge.

* S. 19.

† S. 13.

‡ S. 19.

In a case submitted for confirmation of a sentence of death, the Agra Sudder Court acquitted the prisoner so sentenced by the Sessions Court, and, acting as a Court of Revision, ordered the release of the other prisoners whose case had not come up. 3, Agra, 169.

In three instances, without the appeal of the parties sentenced to death, the Calcutta High Court have altered the findings and reduced the sentences. In the case of Deenoo Jana the Court altered the finding of Dacoity with murder, of which offence the prisoner had been convicted and sentenced to death by the Sessions Judge, and, convicting him under Section 412, Penal Code, of "receiving stolen property acquired by acoity," &c. sentenced him to 10 years' rigorous imprisonment (February st, 1864). In the case of Goorpo Churn Palli and another, the Court onvicted the prisoners of culpable homicide not amounting to murder, nd sentenced them respectively to 5 and 3 years' imprisonment (Septem-ber 26th, 1864). In the case of Saleem Sheikh the Court convicted the risoner of culpable homicide not amounting to murder, and sentenced him o ten years' rigorous imprisonment (November 11th, 1864). All these ases had been tried in the Courts of Session with the aid of Assessors.

The same Court, however, in a more recent case referred for confirmation of sentence of death, passed by a Sessions Judge in a trial held with the aid of Assessors, finding that the prisoners were guilty not of murder, but of grievous hurt, annulled the conviction and ordered a new trial on a charge of that offence, holding that this was the only course open to them. Sheikh Solim and others, 8th February, 1866.

Competence of Sudder Court to direct further enquiry, &c.

400. If the case so referred shall have been tried by the Court of Session§ wth the aid of Assessors, it shall be competent to the Sudder Court,‖ if it think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, to direct such enquiry to be made, or such additional evidence to be taken. The result of the further enquiry and the additional evidence shall be certified to the Sudder Court,‖ and the Sudder Court‖ shall thereupon proceed to pass judgment of acquittal or such sentence as to the Court shall seem right.

§ S. 13.

‖ S. 19.

By Section 210 it is declared that "it shall be competent to the Sudder Court as a Court of Reference, in cases tried with the aid of Assessors, to instruct the Magistrate in like manner [Section 209] to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to any such offence, with the view of

obtaining his or their evidence on the trial." Section 211 provides that "if it shall appear to the Sudder Court as a Court of Reference that any person who shall have accepted an offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information, it shall be competent to such Court to direct the commitment of such person for trial for the offence in respect of which the pardon was tendered."

Confirmation or new sentence must be signed by two Judges.

401. In every case so referred to the Sudder Court, the confirmation of the sentence or any new sentence or order passed by the Sudder Court* shall be signed by at least two Judges of the Court.

* s. 19.

See Act XV. of 1862, Section 2, quoted in note to Section 392 *ante*.

"In cases referred by the Court of Session for the confirmation of a sentence by the Sudder Court, the proper officer of the Sudder Court shall without delay, after the order of confirmation or other order has been made by the Sudder Court, transmit a copy of the order under the seal of the Sudder Court, and attested with his official signature, to the Court of Session, which, if the sentence be confirmed, shall immediately issue a warrant to the Magistrate or other officer in charge of the Jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or in the case of any other order, shall cause such order to be carried into effect." Section 383.

CHAPTER XXIX. ss. 402—406.

SUDDER COURT AS A COURT OF REVISION.

The Calcutta High Court, (Peacock, *C. J.*, Trevor and Norman *J. J.* concurring) delivered the following judgment defining the powers of the High Court as a Court of Appeal and as a Court of Revision.

"It appears to me that the rules contained in Sections 407 and 419 of the Code of Criminal Procedure are not applicable to a case which the Court, as a Court of Revision, thinks it right to take up.

"An appeal is a matter of right in all cases in which an appeal is given, but a revision is in the discretion of the Court. An appeal is for matter of fact as well as for matter of law. A revision is only on matter of law. The two cases, therefore, are very different.

"When Section 407 says that an appeal shall not lie from a judgment of acquittal, it means that the prosecutor shall not, as a matter of right, be entitled to apply to reverse the judgment of acquittal, either upon the facts or upon the law. But Section 404 authorizes the Court to call for and examine the record of any Criminal trial in which it shall appear that there has been error in the decision upon a point of law, and may determine any point of law arising out of the case, and thereupon pass such order as to the Court shall seem right. Section 405 enacts that it shall be lawful for the Court to call for and examine the record of any case tried by any Court of Session, for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court. If it appear to the Court that the sentence passed is too severe, the Court may pass any mitigated sentence warranted

CH. XXIX. — by law. If the Court shall be of opinion that the sentence or order is contrary to law, the Court shall reverse the sentence or order, and pass such judgment, sentence, or order, as to the Court shall seem right, or if it deem necessary, may order a new trial. The word 'sentence' in the latter Section may mean the award of punishment merely, or the whole judgment including the finding. If it refers only to the award of punishment, the finding would stand; and I can scarcely see the necessity or use of the words 'or may order a new trial.' The words 'sentence or order' are in many Sections used as including the finding, and not merely the award of punishment (Sections 415, 416, 417, 420); but whatever may be the construction of the word 'sentence' in Section 405, there can be no doubt that, under Section 404, the Court may set aside a judgment of acquittal for error in point of law. Suppose the decision of a Judge should be monstrously absurd. Suppose upon an indictment for murdering a child, the Judge and the Assessors should find that the prisoner caused the death of the child by doing an act with the intention of causing its death, and that the case did not fall within any of the exceptions mentioned in Section 300 of the Penal Code. But suppose they should also find that the child was under the age of six months, and the Judge should hold that it was not murder to kill a child under that age, and should, therefore, acquit the prisoner, and order him to be discharged, could it be contended that the judgment of acquittal could not be set aside, and that the prisoner should go free for ever? I apprehend that the Court, as a Court of Revision, would clearly have the power to set aside the judgment of acquittal, and declare that, upon the facts found, the prisoner was guilty of murder, and send the case back to the Judge, ordering him to apprehend the prisoner (if he had been discharged), and to pass the proper sentence upon him

"If, in the case above supposed, the Judge were to say it is not necessary to try, whether death was caused by an act done with the intention of causing death, because, if it was so caused, the prisoner was not guilty of murder; I find that the child was under the age of six months, and, therefore, acquit the prisoner. In such a case, there would be no finding on the facts, and the Court, as a Court of Revision, would merely set aside the acquittal, and order a new trial. I have supposed an error in law which is not likely to occur. I put it merely as an illustration. There are many constructions of law equally erroneous, though not so clearly so.

"Again, suppose a Magistrate, in a case triable by him, should convict of an offence, and the Sessions Judge on appeal should, without going into the facts, reverse the decision upon a point of law, and order the prisoner to be discharged, stating that, assuming the facts to be as found by the Magistrate, the prisoner was not guilty of an offence. This Court, if the Judge were wrong in point of law, could, as a Court of Revision, reverse his decision, and direct him to try the appeal upon its merits.

"If a Judge on appeal should uphold the finding of a Magistrate on the facts, and reverse his decision in point of law, and pronounce a judgment of acquittal, and order the prisoner to be discharged: there, as the acquittal would be merely on a point of law, this Court, as a Court of Revision, might reverse the judgment of acquittal, and order the sentence of the Magistrate to stand.

"There are also cases in which, notwithstanding Section 419, the Court, as a Court of Revision, could enhance a punishment.

"In the case of Bourne *versus* the King (9 Adolphus and Ellis's Reports, p. 58) it was held that a sentence of transportation, for an offence for which the only punishment was death, was erroneous and must be re-

versed. The Court held that they could merely reverse the erroneous sentence, but could not pass the right one, and the prisoners were discharged.

"The law was amended by 11 and 12 Vict. c. 78, by which the Court, upon reversing an erroneous sentence, may give the proper judgment. Here, under Section 405, the Court, as a Court of Revision, has a similar power; but, in order to do so, it may be necessary to enhance the punishment. In the case suggested by Mr. Justice Campbell, if a Sessions Judge should pass sentence of rigorous imprisonment for 14 years for murder, such a sentence would be bad, for it is not authorized by law, (Section 302 of the Penal Code); or if he should pass sentence of transportation for 7 years for the offence of murder committed by a person under sentence for transportation for life, the sentence would be contrary to law. (See Section 403, by which death is the only punishment which can be awarded).

"In such cases, the Court, as a Court of Revision, could under Section 405 reverse the sentence, and pass the proper sentence, notwithstanding that in such a case the sentence must be enhanced in order to pass a legal sentence—in the former case, from 14 years' rigorous imprisonment to death or transportation for life—and in the latter, from transportation for seven years to sentence of death. Section 405 says:—'If the Court shall be of opinion that the sentence or order is contrary to law, it shall reverse the sentence or order, and pass such judgment, sentence or order as to the Court shall seem right, or, if it deem it necessary, may order a new trial.' In the case supposed in which a prisoner under sentence of transportation for life should be found guilty of murder, and sentenced to transportation for 7 years, the Court might think the finding right upon the evidence, and there would therefore be no necessity for ordering a new trial. In such a case, a question might arise whether the Court would be bound to pass the only legal sentence, *viz.* death, or might send the case back to the Sessions Judge to pass the sentence. I am of opinion that the Court might send the case back, with an order to pass the proper sentence under the words 'shall pass such judgment, sentence, or order,' &c.

"In the case supposed of a prisoner being sentenced to 14 years' rigorous imprisonment for murder, upon setting aside the erroneous sentence, the right sentence would be a discretionary one, *viz.* 'death or transportation for life.' In such a case I think the Court ought to send the case back for proper sentence to be passed, in the same manner as it would do under Section 402.

"By the Statute 11 and 12 Vict. c. 78, s. 5, the Court, when it reverses a judgment, may either pass a proper judgment, or remit the case to the Lower Court, in order that such Court may pass the proper judgment. It appears to me that in all cases in which the Court as a Court of Revision thinks it right to reverse an acquittal on a point of law, or to reverse as erroneous a sentence, in order that the right sentence may be passed, if the right sentence would enhance the one already passed, the offender should have an opportunity of being heard by himself, or his pleader, or agent, either before the Lower Court if the case is remitted to it, or before the High Court if the Judges pass the proper sentence themselves.

"The Court may act as a Court of Revision after it has acted as a Court of Appeal, if it found it necessary to do so in order to correct an error in law which cannot be set right on appeal.

"For instance, if a man should be found guilty of a murder, and sentenced to 7 years' transportation, and if the prisoner should appeal on the facts, the Court might uphold the finding of guilty of murder on appeal,

CH. XXIX. ss 402&403 — and afterwards, as a Court of Revision, might set aside the sentence of 7 years' transportation, and pass a legal sentence for murder, or send it back to the Lower Court to pass such sentence, pointing out, as they would in a case under Section 402, what is the proper punishment.

"As a Court of Revision, the Court cannot reverse the finding of a Jury."

Gorachund Gope and others, 3rd March, 1866.

* S 19. † S 13.

Revision in cases of illegal sentence.

402. The Sudder Court,* in any case tried by the Court of Session† in which, upon a review of the abstract statement or calendar of prisoners punished without reference, it shall appear that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, shall annul the sentence, and shall certify to the Court of Session† the sentence which may lawfully be passed for such offence; and thereupon the Court of Session† shall pass a new sentence according to law, and shall amend the record in accordance therewith.

‡ S 19. § S. 13.

Revision of trials.

403. The Sudder Court,‡ in any case tried before a Court of Session§ in which, upon a review of the abstract statement or calendar of prisoners punished without reference, it shall appear that there has been error in the decision of the Court of Session§ on a point of law, or that a point of law should be considered by the Sudder Court,‡ may call for the record, or such portion thereof as it may deem necessary, together with a report of the Judge's direction to the Jury, if the case have been tried by a Jury, and upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and thereupon pass such order as to the Sudder Court‡ shall seem right.

A Sessions Judge having on appeal reversed a conviction by a Magistrate, on the ground that the act charged did not constitute an offence, the Calcutta High Court held, that he was in error, and that the alleged facts would amount to an offence under the Penal Code; and, reversing his reversal of the Magistrate's order, directed the Judge to cause the accused to be re-taken and to re-hear the appeal. As the prisoner had not had an opportunity of arguing his case, owing to its having come before the High Court as a Court of Revision, the Court intimated that if the decision of the Magistrate be upheld by the Judge, the question of law will be submitted to a Full Bench and the prisoner will have an opportunity of being heard. Madaree Chowkeedar, February 17th, 1865.

The Sessions Judge having found the facts not proved, there was no further hearing of this case; but this point of law was settled in another case. See pages 165 et seq.

Although the Court considered that the fine in a case brought before them by a Sessions Judge was too severe, the sentence was allowed to stand, as no illegality was found such as to warrant the annulment of the proceedings as proposed by the Judge. Calcutta High Court, Raj Koomar Mitter, June 12th, 1864.

The same Court, in the case of Ramdhon Mundul (September 20th, 1865), clearly laid down that, except on an error on a point of law, it had no jurisdiction to interfere with an order passed by a Magistrate and confirmed on appeal by the Sessions Judge. The Judicial Commissioner, Punjab, (2944, June 17th, 1862) has also declined to interfere with the order of a Magistrate in which the error was not on law but on fact.

The High Court can under Section 404 exercise jurisdiction upon petition of the party affected [Madras High Court, 1863]; but it refused to call for the record, or the proceedings of the lower Court, until there appeared a reasonable *primâ facie* ground for doubting either the regularity of the proceedings or the legality or propriety of the sentence or order passed. 1, Madras, 138.

The evidence having shown that the party convicted by a Magistrate of an offence within his jurisdiction, had committed an offence beyond his jurisdiction, and triable exclusively by a Court of Session, the Agra Sudder Court quashed the conviction and ordered the commitment of the prisoner. 2, Agra, 374.

The evidence having been pronounced insufficient for the conviction of certain persons before the Court on appeal, the Court, as a Court of Revision, directed the release of non-appellants who had been convicted on the same evidence. 3, Agra, 169.

General power of revision by the Sudder Court.

404. The Sudder Court* may, on the report of a Court of Session† or of a Magistrate, or whenever it thinks fit, call for the record of any criminal trial or the record of any judicial proceeding of a Criminal Court,‡ other than a criminal trial, in any Court within its jurisdiction, in which it shall appear to it that there has been error in the decision on a point of law, or that a point of law should be considered by the Sudder Court,* and may determine any point of law arising out of the case, and thereupon pass such order as to the Sudder Court* shall seem right.

* s. 19. † s. 13. ‡ s. 11.

Sudder Court empowered to call for and examine records of Court of Session.

405. It shall be lawful for the Sudder Court§ to call for and examine the record of any case tried by any Court of Session‖ for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court. If it appear to the Sudder Court§ that the sentence passed is to severe, the Sudder Court§ may pass any mitigated sentence warranted by law. If the Sudder Court§ shall be of opinion that the sentence or order is contrary to law, the Sudder Court§

§ s. 19. ‖ s. 13.

CH. XXIX. s. 406.

shall reverse the sentence or order and pass such judgment, sentence, or order as to the Court shall seem right, or, if it deem necessary, may order a new trial.

In an appeal against a conviction for culpable homicide not amounting to murder [Section 304, Penal Code], the Calcutta High Court found that the offence of which the appellant should have been found guilty was murder [Section 302]. The Court dismissed the appeal, and as a Court of Revision ordered a new trial on a charge for that offence. Berin Bazikur and another, July 6th, 1865, Mahomed Elim and others, July 7th, 1865, Somuber Gwalla, December 5th, 1865, Pooshoo, December 14th, 1865. (All these trials had been held in the Courts of Session with the aid of Assessors, not by Jury.)

The Madras High Court refused to call for the record of the proceedings of a Sessions Judge until there appeared a reasonable *primâ facie* ground for doubting the regularity of those proceedings or the legality or propriety of the sentence or order passed. 1 Madras, 138. The release of non-appellants was ordered, as the evidence against them had been pronounced insufficient for the conviction of certain persons who had appealed. 3, Agra, 179. A case heard by a Sessions Judge *on appeal* is not a case "tried by any Court of Session" within the terms of Section 405. Calcutta High Court, Ramdhon Mundul, September 20th, 1865.

A person tried for murder was convicted of culpable homicide not amounting to murder. On appeal, the Calcutta High Court considered that, on the evidence, the conviction should have been for murder. The Court however held that they were unable to interfere, for, though the Judge had not, as he should have done, recorded a distinct finding of acquittal on the charge for murder, his conviction for the lesser offence implied that acquittal, and as there was no error on a point of law, nor illegal sentence, the Court could not act as a Court of Revision. Torab Sheikh, January 12th, 1865.

S. 19.

Proceedings of a case revised by Sudder Court to be certified to Court in which conviction was had.

406. Whenever a case shall be revised by the Sudder Court* under this Chapter, the Sudder Court* shall certify its decision or order to the Court in which the conviction was had or by which the order was passed, and such Court shall thereupon make such orders as are conformable to the decision of the Sudder Court,* and if necessary amend the record in accordance therewith. Provided that, in any case which shall be revised by the Sudder Court* under this Chapter, it shall not be competent to the Sudder Court* to reverse the verdict of the Jury, or, except as provided in this Chapter, to alter or reverse the sentence or order of the Court below.

Proviso.

CHAPTER XXX. ss. 407—428.

APPEALS.

ss. 407–409.

No appeal in cases of acquittal.

407. There shall be no appeal from a judgment of acquittal passed in any Criminal Court.* * S. 11.

The Calcutta High Court, by a decision of a Full Bench, has laid down that Section 407 does not apply to any case which, as a Court of Revision, it may think it right to take up. Gorachand Ghope. 3rd March, 1866

Except on appeal the Magistrate of the District has no authority to reverse an order of a Subordinate Magistrate, nor the Sessions Judge that of any Magistrate. Such an order, if illegal, can only be reversed on reference to the High Court under Section 434. Calcutta High Court, 875, 885, 1863.

Appeals in what cases in trials by Jury or with Assessors.

408. Any person convicted on a trial held by a Court of Session† may appeal to the Sudder Court.‡ If the conviction was in a trial held with the aid of Assessors, the appeal may be on a matter of fact as well as on a matter of law. † S. 13. ‡ S. 19.

Appeal from Magistrates.

409. Any person convicted on a trial held by the Magistrate of the District§ or other Officer exercising the powers‖ of a Magistrate, or required by such Magistrate or other Officer under Section 295 or Section 296 of this Act to give security for good behaviour, may appeal to the Court of Session¶ to which such Magistrate or other Officer is subordinate. § Ss. 14. 1 ‖ S. 16. ¶ S. 13.

Section 411 contains a proviso to this Section.

An appeal from a conviction passed by a Magistrate under a local law [e. g. Act XXXI. 1860, Section 5] lies to the Sessions Judge, as Section 21 of the Code extends its operation to offences defined in or made punishable by local laws. Calcutta High Court, 713, 1863; also Punjab, April 10th, 1863. Similarly, with regard to a conviction under a special law, Act V. of 1861. Calcutta High Court, Thakoor Doss, 31st January, 1866. A Sessions Judge cannot review his judgment passed on an appeal. He can, if he thinks proper submit his proceedings for the orders of the Superior Court. Agra Sudder Court, November 24th, 1864.

Orders passed under Sections 62, 63, Criminal Procedure, not being convictions, are not appealable [Madras High Court, 1863]; nor an order for maintenance under Section 316 [Jud. Com Punjab, 1863]; nor an order of a Magistrate under Section 280 requiring penal recognizance to keep the peace, [Agra Sudder Court, Kasheenath, November 7th, 1863]. A Sessions Judge has no authority to cancel the order of a Magistrate except on appeal. Calcutta High Court 885, 1863. On appeal from the order of a

CH. XXX. ss. 410 & 411

Magistrate, a Sessions Judge commuted the sentence of imprisonment to one of fine, but awarded a sentence of nine months imprisonment in default of payment of fine. This alternative sentence was reduced by the Bombay High Court to six months, that being the maximum that a Magistrate could award, the Court apparently holding that a Sessions Judge on appeal could not pass any sentence that the Magistrate himself could not have passed. 1, Bombay, 139.

Appeal from Justices of the Peace.

410. Any person convicted and sentenced by any Justice of the Peace exercising jurisdiction under the Statute 53 George III, c. 155, s. 105,* or under Act VII of 1853* (*to extend the jurisdiction of Magistrates under the* 53 *George III*, c. 155, *s.* 105, *in cases of assault, forcible entries, and other injuries accompanied with force, not being felonies*), or under Section 163 or 165 of this Act, may appeal to the Court of Session† having jurisdiction at the place at which the appeal would have been heard had the sentence been passed by a Magistrate subordinate to such Court. Cases appealed under this Section shall not be afterwards liable to revision by means of a writ of *certiorari*. Provided that nothing in this Section shall be held to take away the power of quashing any conviction by means of a writ of *certiorari* in any other case than when there has been such an appeal as aforesaid.

* See App. B.

† S. 13.

An appeal lies to a Sessions Judge against every sentence passed by a Magistrate being a Justice of the Peace: Section 411 does not restrict the power of the Appellate Court in such cases. Jud. Com. Punjab, Cir. 97, September 9th, 1862.

No appeal in certain criminal cases.

411. In all cases in which a Court of Session‡ or the Magistrate of a District§ or other Officer exercising the powers of a Magistrate shall pass a sentence of imprisonment not exceeding one month, or of a fine not exceeding fifty Rupees, no appeal shall be allowed.

‡ S. 13.

§ Ss. 14, 18.

If a sentence of imprisonment *and* fine be passed, although both sentences be within the limits specified in Section 411, there will be an appeal (Judicial Commissioner, Punjab and Central Provinces); but the fact that imprisonment is awarded in default of payment of fine will not alone give a right of appeal. Agra Sudder Court, September 1st, 1863.

Jurisdiction over the appeal of one person convicted by a Magistrate does not give Sessions Judge constructive jurisdiction over the convictions of other prisoners whose sentences under Section 411 may not be appealable. Calcutta High Court, 922, 1864. Section 411 does not apply to sentences passed by a Magistrate and Justice of the Peace. All such orders are appealable to the Sessions Judge. Jud. Com. Punjab, Cir. 97, September 9th, 1862.

Appeals from Officers exercising powers less than those of a Magistrate.

412. Any person convicted on a trial held by an Officer exercising powers* less than those of a Magistrate, may appeal to the Magistrate of the District† or other Officer exercising the powers‡ of a Magistrate who shall have been empowered by the Government to hear such appeals.

* S. 22.
† Ss. 14, 18.
‡ S. 16.

Except on appeal, the Magistrate of a District cannot reverse or modify the order of a Subordinate Magistrate. Calcutta High Court, 875, 1863.

A Sessions Judge is not competent to hear an appeal against an order passed by a Subordinate Magistrate. *Id.* 457, 1865.

There is no appeal against an order passed by a Subordinate Magistrate under Section 270, Criminal Procedure, awarding amends to a person for a frivolous and vexatious complaint brought against him, as such an order is not a conviction on trial. *Id.* 904, 1863. Agra Sudder Court, September 5th, 1864.

Appeals from orders under Chapter X.

413. Any person convicted by any Civil Court under Chapter X of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, subject to the rules provided in Sections 416, 417, 418, 419, and 421 of this Act. Petitions of appeal under this Section, if presented to any District Court, must be presented within thirty days immediately following and exclusive of the day on which the sentence or order appealed against is passed. Petitions of appeal to the Sudder Court‡ must be presented within sixty days calculated as above. The Sudder‡ and District Courts may admit an appeal after the time herein provided, on sufficient cause shown.

‡ S. 19.

Unless otherwise provided, no appeal to lie from any order or sentence of a Criminal Court.

414. Unless otherwise provided by this Act or by any other law for the time being in force, no appeal shall lie from any order or sentence of a Criminal Court.§

§ S. 11.

Period for presenting petitions of appeal.

415. Petitions of appeal to the Court of Session* or to any Court subordinate to the Court of Session* must be presented within thirty days immediately following and exclusive of the day on which the sentence or order appealed against is passed. Petitions of appeal to the Sudder Court† must be presented within sixty days calculated as above. The Sudder Court† and the Court of Session* may admit an appeal after the time herein provided, on sufficient cause shown.

* S. 13.
† S. 19.

CH XXX. ss 416–419.

The late Calcutta Sudder Court, Circular May 6th, 1862, ordered that as a rule, whenever a petition of appeal is presented to a Sessions Judge for submission to it, if the case so appealed has been tried with the aid of Assessors, all the proceedings connected therewith should be forwarded, but should the case have been tried by Jury, it is necessary to forward only the petition of appeal.

Copy of judgment to accompany petition.

416. Every petition of appeal shall be accompanied by a copy of the sentence or order appealed against.

Appellate Court may reject petition of appeal.

417. It shall be competent to the Appellate Court to reject the appeal if, on a perusal of the petition of appeal and the copy of the sentence or order appealed against, and after hearing the appellant or his counsel or agent if they appear, the Court shall consider that there is no sufficient ground for questioning the correctness of the decision, or for interfering with the sentence or order appealed against. Before rejecting the appeal, the Court may call for and peruse any part of the proceedings of the lower Court, but shall not be bound so to do.

"Agent." Section 432 declares that "every person charged before any criminal Court with an offence may of right be defended by Counsel or authorized agent." Act XX. of 1865, Section 40 modifies this by requiring "the permission of the presiding Judge or Magistrate," if the authorised agent be not a Pleader or Mookhtar duly qualified under that Act.

Appeal by party in Jail.

418. If the party appealing be in Jail in pursuance of the sentence or order appealed against, he shall be at liberty to present his petition of appeal and the copy of the sentence or order appealed against, to the Magistrate or other Officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

Appellate Court may call for the proceedings of lower Court.

419. The Appellate Court, after perusing the proceedings of the lower Court, and after hearing the plaintiff or his counsel or agent if they appear, may alter or reverse the finding and sentence or order of such Court, but not so as to enhance any punishment that shall have been awarded.

The Calcutta High Court by a decision of a Full Bench, has laid down that Section 419 does not apply to any case which, as a Court of Revision, it may think it right to take up Gorachand Ghope, 3rd March, 1866.

The final order of an Appellate Court must, under S. 429, be written in the vernacular of the presiding Officer, together with his reasons for making or passing the same Calcutta High Court, 644, 1865.

A Sessions Judge, after dismissing an appeal, has full power to direct that a portion of the fine paid by the appellant shall be awarded

as compensation, under Section 44, to the complainant, even though the Magistrate has already distinctly refused to award such compensation. Calcutta High Court, 766, 1864.

A Magistrate convicted a prisoner of two offences, passing two distinct sentences. On appeal, the Sessions Judge acquitted him of one offence, but increased the sentence passed on the other offence of which he convicted the prisoner. The Agra Court held that the Judge acted illegally in enhancing the punishment awarded by the Magistrate for the offence of which he was convicted. 5, Agra, 153.

The Calcutta High Court on the appeal of the convict cancelled as illegal a sentence of 10 years' transportation for abetment of murder [Sections 109, 302, Penal Code], and directed the Sessions Judge to pass a legal sentence. Jan Mahomed and others, December 26th, 1864.

In another case (Mahomed Elim and others, July 5th, 1865) the same Court, finding that on the facts proved the prisoners had been erroneously convicted by the Sessions Judge and Assessors of culpable homicide not amounting to murder, instead of murder, quashed the conviction, and directed the Judge, after amending the charge under Section 244, Criminal Procedure, to proceed with the trial, bearing Section 246 in mind, and pass a legal sentence.

In another and later case however, the same Court held that it was unable to interfere, as the conviction for culpable homicide not amounting to murder implied an acquittal of murder. Torab Sheikh, January 12th, 1865.

The Judicial Commissioner, Punjab, has held that the competency of an Appellate Court to maintain the sentence of the lower Court while altering its finding, depends on the determination of the question, whether the accused has been prejudiced by the error in the charge or not.

The signature of two Judges necessary.

420. The sentence or order of the Sudder Court,* modifying, amending, or reversing the sentence or order of a lower Court on appeal or revision, shall be signed by at least two Judges of such Sudder Court.*

* S 19.

This Section has been modified by Section 36 of the Letters Patent for the High Courts of Judicature at Calcutta, Madras, and Bombay, dated the 28th December, 1865.

"And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal, (or Madras or Bombay) in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, under the provisions of the Thirteenth Section of the aforesaid Act of the Twenty-fourth and Twenty-fifth Years of Our Reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail."

Act XV. of 1862, Section 2, declares that "when the Sudder Court in any part of the Territories to which the Code of Criminal Procedure has been or shall be extended shall consist of a single Judge, such Judge shall have all the powers of two or more Judges of the Sudder Court under Sections 398, 401, and 420 of the said Code."

Appellate Court may suspend sentence pending appeal, and release defendant on bail.

421. In any case in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspended, and if the appellant be in confinement for an offence which is bailable, may order that he be released on bail.

The provisions of this Section, it should be noted, apply to Appellate Courts, and apparently not to Courts of Revision under Chapter XXIX.

Cash or Government Promissory Notes may be received in lieu of bail. S. 437.

By the practice of the Calcutta High Court, an order passed by a Subordinate Court may be suspended, or a convict may be released on bail by order of one of its Judges. Jadoo Sirdar, March 31st, 1864.

The Calcutta High Court held that a Sessions Judge acted rightly in refusing, pending his appeal, to bail a person convicted of a non-bailable offence, as he was not competent to pass such an order. He was, however, informed that if he saw reason to suspend the sentence pending the appeal, he was at full liberty to do so, the prisoner remaining in *hajut* (*i. e* in custody), instead of in rigorous imprisonment. Koralee Kinkur Mookerjea. July 31st, 1865

The period during which a sentence may be suspended pending appeal is not to be reckoned in calculating the term of imprisonment, if the appeal be rejected. Madras High Court. See note to S. 386.

Appellate Court may direct further enquiry, &c.

422. In any case in which an appeal has been allowed, it shall be competent to the Appellate Court, if it think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, to direct such enquiry to be made and additional evidence to be taken. The result of the further enquiry and the additional evidence shall be certified to the Appellate Court, and the Appellate Court shall thereupon proceed to pass such judgment, sentence, or order as to such court shall seem right.

Any proceedings involving further enquiry, or the taking of additional evidence should be promptly completed, in order that the course of justice may not be interrupted more than is absolutely unavoidable. Calcutta High Court. 11, 1865.

A case of "giving false evidence" [Section 193, Penal Code] was remanded by the Calcutta High Court for evidence as to the administering to the appellant of a solemn affirmation under Act V. of 1840. Munwar Khan, November 11th, 1865.

The Agra Sudder Court [May 5th, 1863] informed a Sessions Judge, that, acting as an Appellate Court, he could not send for and examine witnesses, inasmuch as the procedure in appeal does not contemplate such · 1st, because the proceedings in appeal are not a trial before the Court of Session; 2nd, because the law requires that the witnesses for the prosecution shall be examined in the presence of the accused who under existing circumstances is not before the Court when the appeal is

heard; 3rd, because Section 422 distinctly lays down the procedure to be followed for taking additional evidence.

The Calcutta High Court [Peacock, *C. J.* Seton-Karr, Louis S. Jackson, E. Jackson, *J. J.* Kemp, *J. dis.*] delivered the following judgment as to the power of an Appellate Court acting under Section 422:—

"It appears to us that the Sessions Judge has power to enhance the punishment awarded by the Joint Magistrate.

"If an Appellate Court can do justice without calling for additional evidence, the case falls within Section 419, and the sentence or imprisonment cannot be enhanced; but when an Appellate Court, acting in good faith, thinks it necessary to call for further enquiry or additional evidence, the case falls under Section 422; and in that case, the Appellate Court is required to pass such sentence as it shall think right. There is nothing in Section 422 to prevent the Court from enhancing the punishment awarded by the Lower Court. The sentence is a new sentence of the Appellate Court, for which that Court is responsible, and not a mere modification of the sentence of the Lower Court.

"An Appellate Court would not be justified in requiring fresh evidence, merely for the sake of enabling it to pass a new sentence, and thereby to enhance the punishment. It can do so easily, when the ends of justice require a further enquiry or fresh evidence to be taken upon a point bearing upon the guilt or innocence of the accused.

"We concur with Mr. Justice L. S. Jackson in thinking the point or points upon which further enquiry or additional evidence is considered necessary, should be distinctly stated; and we are of opinion that the accused is entitled to be present at the enquiry, and to cross-examine the witnesses, and also, if he wishes, to adduce evidence in answer: but we cannot agree with the learned Judge that, if the order be merely to examine witnesses for the defence, the examination of such witnesses ought not to enable the Appellate Court to enhance the punishment. The evidence of such witnesses is clearly upon a point bearing upon the guilt or innocence of the accused, and brings the case within Section 422.

"Suppose a Magistrate should refuse to hear the prisoner's witnesses, the Sessions Judge would, no doubt, upon appeal, order those witnesses to be examined as bearing upon the guilt or innocence of the accused.

"The witnesses might be persons of character and respectability, and, when called, might, so far from proving the prisoner's innocence, show that the offence was committed under circumstances of great aggravation. The case would not then stand as it did when the Magistrate passed sentence, and it is no hardship upon a prisoner who appeals, and insists upon having his witnesses examined, that he should be liable to have his punishment enhanced, if those witnesses prove circumstances which aggravate his offence.

"It is not very clear whether an appeal lies from the Sessions Judge to the High Court, in a case in which, acting as an Appellate Court, he orders additional evidence to be taken under Section 422 and enhances the punishment awarded by a Magistrate. But we think that such a case falls substantially within the provisions of Section 408, and must be considered as a conviction or a trial held by a Court of Session, and consequently that an appeal lies to this Court.

"In the present case, we think that the Judge very properly called for additional evidence, as there was none before the Magistrate, sufficiently to show that the prisoner was guilty.

"The Judge, in our opinion, was justified in point of law, in passing this sentence which he did, notwithstanding the punishment was thereby enhanced."

Finding of dishonest misappropriation not reversible on the ground of the offence proved being theft.

423. No finding by a Court of the offence of dishonest misappropriation of property under Section 403 of the Indian Penal Code, or of dishonest misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of criminal breach of trust under Section 405 of the said Code, or of criminal breach of trust by a carrier, wharfinger or warehouse-keeper under Section 407 of the said Code, or of criminal breach of trust as a clerk or servant under Section 408 of the said Code, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of theft under Section 378 of the said Code, or the offence of theft in a building, tent or vessel under Section 380 of the said Code, or the offence of theft as a clerk or servant of property in the possession of his master under Section 381 of the said Code.

See Sections 56, 57.

Finding of theft not reversible on the ground of the offence proved being dishonest misappropriation.

424. No finding by a Court of the offence of theft under the said Section 378 of the Indian Penal Code, or of theft in a building, tent or vessel under the said Section 380, or of theft as a clerk or servant of property in the possession of his master under the said Section 381, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of dishonest misappropriation of property under the said Section 403, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under the said Section 404, or the offence of such dishonest misappropriation under the said Section, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under the said Section 405, or the offence of criminal breach of trust as a carrier, wharfinger or warehouse-keeper under the said Section 407, or the offence of criminal breach of trust as a clerk or servant under the said Section 408.

See Sections 58, 59.

Saving of power of Appellate Court to reduce punishment awarded under last two Sections.

425. Provided that nothing in the last two Sections shall preclude the Appellate Court in any case mentioned therein from reducing the punishment awarded by a lower Court in such case, within the limits prescribed for the offence which such Appellate Court shall consider to have been proved by the evidence against the accused person.

Finding or sentence not ordinarily reversible by reason of error or defect in the charge or the proceedings.

426. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or defect either in the charge or in the proceedings on trial, unless the accused person shall have been sentenced to a larger amount of punishment than could be awarded for the offence of which, in the judgment of the Appellate Court, the accused person ought upon the evidence to have been found guilty, or unless, in the judgment of the Appellate Court, the accused person shall have been prejudiced by such error or defect; and in case the accused person shall have been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

Appellate Court may reduce punishment.

The prisoner having been committed to the Court of Session on a charge of criminal breach of trust [Section 406, Penal Code], the Sessions Judge, acting under Section 244, Criminal Procedure, amended the charge by adding a head, charging him under Section 418, Penal Code, with cheating. Although he was acquitted of criminal breach of trust, and erroneously convicted of cheating, of which the facts did not show him to be guilty, the Calcutta High Court refused to interfere, holding that he was clearly guilty of criminal breach of trust, and the sentence passed was not severe. Alum Sheikh, November 25th, 1862

The Calcutta High Court declined to interfere in a case of theft in which the proceedings had been held by a Magistrate whose property had been stolen, holding that the appellant had had a fair trial before the Court of Session, and the irregular proceedings of the Magistrate were not sufficient to vitiate the trial. Boidnath Singh and others, June 17th, 1865 also 3, Agra, 93

The Judicial Commissioner, Punjab, has held that the competency of an Appellate Court to maintain the sentence of a lower Court, while altering its finding, depends on the determination of the question, whether the accused has been prejudiced by the error in the charge or not.

CH. XXX. ss.427&428 — The Calcutta High Court [707, 1864] has declared that Section 426 generally in effect enables an Appellate Court to find a prisoner guilty of an offence with which he had not been specifically charged, if the evidence is sufficient to sustain the finding, care being taken that the punishment is reduced to that which the offender should have received for the offence which he actually has committed, and that the accused has not been prejudiced by any error or defect either on the charge or on the proceedings of the Court below.

The appellant having been convicted of abetment of grievous hurt, and the charge having been for grievous hurt only, the Agra Sudder Court refused to interfere, holding that the error or defect in the proceedings had not prejudiced him. 2, Agra, 278.

In another case, the same Court upheld the sentence of the lower Court, although the offence charged, abetment of kidnapping [Sections 116, 363, Penal Code], was not proved, but the sentence was not excessive for wrongful concealment of a kidnapped person [Section 368], of which the evidence showed that he was guilty. 2, Agra, 369. In another case, the Court refused to interfere, although from the evidence the appellant should have been convicted of attempt to commit murder [Section 307, Penal Code] rather than of abetment of murder [Sections 109, 302]. 2, Agra, 313.

* s 13.

Court of appeal how to proceed in case of conviction by a Court not having jurisdiction.

427. When a Court subordinate to a Court of Session* shall have convicted a person of an offence not triable by such Court, it shall be competent to the Appellate Court to annul the conviction and sentence of such Court, and to direct the trial of the case by a Court of competent jurisdiction.

An Appellate Court other than the High Court is not empowered by Section 427 to interfere with an order passed by a Subordinate Court, *except on appeal.* If no appeal has been preferred, and the sentence or order appears to be contrary to law, the case should be referred to the High Court, under Section 434. Calcutta High Court, 875, 1865.

Even when an appeal has been preferred, a Sessions Judge cannot annul a conviction regarding an offence within the Magistrate's jurisdiction, because he considers that the evidence discloses the commission of a more serious offence over which the Magistrate has no jurisdiction. It is only when a Court subordinate to a Court of Session shall have convicted persons of an offence not triable by such Court, that it is competent to the Appellate Court to annul the conviction and sentence. *Id.* Ichaibur Dobey, September 14th, 1865: Ramtuhul Singh, January 16th, 1866.

Finality of order on appeal.

428. Except as provided in Section 405 of this Act, sentences and orders passed by an Appellate Court upon appeal shall be final.

The Calcutta High Court [Ramdhon Mundul, September 28th, 1865,] ruled that, Section 428 notwithstanding, it could not, except on error on a point of law, interfere with an order passed by a Magistrate and confirmed on appeal by a Sessions Judge. The Court further held that on reading Section 428 with Section 405 and other Sections in

Chapter XXIX, it seemed as if Section 404, and not Section 405, was the Section intended to be referred by Section 428.

Because his order is not appealable, a Magistrate cannot refuse to allow a convict in Jail to execute a Vakalutnamah. 1, Madras, 134.

CHAPTER XXXI. ss. 429—445.

General Rules.

ss. 429–431.

In what language sentence to be written.

429. Every sentence or final order of a Criminal Court,* together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding Officer, and shall be dated and signed by such Officer at the time of his making or passing the same, and the original shall be filed with the record or proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in proceedings before such Officer, shall be incorporated in the record of the sentence or order. * s. 11.

A translation of all final orders and sentences must be incorporated with the record, notwithstanding that, under orders of the Local Government under Section 196, the evidence may have been recorded in English. Calcutta High Court, 1044, 1864.

A Sessions Judge in his judgment (that is, in his reasons for making or passing his sentence or final order,) is bound to state the evidence upon which he convicts the persons under trial before him. *Id.* Kodai Kahar, January 15th, 1866: Ishur Manjee, 23rd *Id.*

When it may be written in English.

430. If the vernacular language of the presiding Officer be not English, and the Officer be sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in that language, and prefer to write the same in that language, the sentence or final order may be written in English.

Employment of interpreter.

431. When the services of an interpreter are required by any Criminal Court† for the interpretation of any evidence or statement, such interpreter shall be sworn in the manner provided for witnesses by any law for the time being in force, to interpret truly such evi- † s. 11.

CH XXXI SS 432–434

dence or statement, and such interpreter shall be bound to state the truth in his interpretation of such evidence or statement.

See Section 43 and note

Right of accused to be defended by Counsel

* S 11

432. Every person charged before any Criminal Court* with an offence may of right be defended by Counsel or authorized agent.

This has been modified by Act XX of 1865, Section 40, which requires "the permission of the presiding Judge or Magistrate" if the agent be not a Pleader or Mookhtar duly qualified under that Act It further declares that "no person so appearing, pleading, acting, or assisting shall be entitled to receive any fee or reward therefor"

Confinement of youthful offenders in reformatories

† S 18

433. When any person under the age of sixteen years shall be sentenced by any Magistrate or Court of Session† to imprisonment for any offence, it shall be lawful for such Magistrate or Court to direct that such offender, instead of being imprisioned in the Criminal Jail, shall be confined in any reformatory which may be recognised by the local Government as a fit place for confinement, in which there may be means of suitable discipline and of training in some branch of useful industry, and which shall be kept by a person willing to obey such rules as the Government may direct with regard to the discipline and training of persons confined therein. All persons confined under this Section shall be subject to the rules so laid down by Government.

Act VI of 1864, Section 8, further enacts that "any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code" Reading Act VI of 1864, Section 5, with Section 433, Criminal Procedure, the Agra Sudder Court [39, January 19th, 1865] has held that any person under the age of sixteen years is a juvenile offender within the terms of the former law

Powers of Court of Session and Magistrate to regulate the proceedings of subordinate Courts

‡ S 11

434. It shall be at all times lawful for a Court of Session‡ and for a Magistrate to call for and examine the record of any Court immediately subordinate to such Court or Magistrate, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such subordinate Court. If the Court of Session‡ or Magistrate shall be of

opinion that the sentence or order is contrary to law, the Court or Magistrate shall refer the proceedings for the orders of the Sudder Court.* It shall not be lawful for any other Court than the Sudder Court* to alter any sentence or order of any subordinate Court, except upon appeal by parties concerned duly made according to the provisions of Chapter XXX of this Act.

* S. 19.

The inexpediency of a commitment forms no valid ground for the action of the Sudder Court in cancelling a commitment regularly made to a Court of Session. It can be cancelled only on grounds of irregularity of proceedings or illegality of sentence or order. Agra Sudder Court, September 26th, 1863.

The Magistrate of the District cannot call for the record of a case decided by a Magistrate exercising the full powers of a Magistrate, and record his opinion on his proceedings, since such a Magistrate is in no way judicially subordinate to the Magistrate of the District. Calcutta High Court, 504, 1864. Unless a Sessions Court intends to refer a case to the High Court, it should not give its opinion on the evidence. *Id.* Paul Charrier, January 8th, 1865.

When Court of Session may order commitment of party discharged by Magistrate.

435. In the case of offences not triable by the Magistrate, the Court of Session† may order the commitment to the Court of Session† of any accused person who may have been discharged by the Magistrate. In the case of such offences the Court of Session may order an enquiry into any complaint which the Magistrate may have dismissed without enquiry.

† S. 13.

A Superior Court is bound to refer to the High Court any case in which an illegal sentence or order may have been passed, as soon as it is brought to notice. The term for appeals [Section 415] is not applicable to references. Calcutta High Court, 480, 1865.

"Without enquiry." This clearly means without proper enquiry, that is, when a Sessions Judge sees that there are *primâ facie* good grounds for supposing that a charge for an offence triable exclusively by a Court of Session is well founded, and that a Magistrate has dismissed it without enquiry, *i. e.* proper enquiry. Calcutta High Court, 802, 1862.

The Agra Sudder Court [5, Agra, 181] has restricted the powers of a Sessions Judge under Section 435, holding that in a case of dacoity dismissed under Section 180 by a Magistrate, after enquiry and report by a Police Officer, the Sessions Judge could not act.

On completing an enquiry ordered by the Sessions Judge, the Magistrate should follow one or other of the courses prescribed by Sections 225 and 226 of the Code of Criminal Procedure, that is, he should either discharge or commit the accused. He is not bound to report the result of his enquiry to the Sessions Judge; but that officer can call for the record, and if necessary, direct the Magistrate to commit. A Sessions Judge is not competent to order the Magistrate to proceed by issuing a summons or warrant, or to hold further enquiry in a case dismissed by

CH XXXI ss. 436–439.

him under Section 67, before the issue of a summons. If such a case exhibits negligence or ignorance on the part of a Magistrate, the Sessions Judge should report it to the High Court. Calcutta High Court, 432, 1863.

A Sessions Judge can act under Section 435 only in cases where the offence charged is not triable by a Magistrate, *i. e.* is exclusively triable by a Court of Session. He cannot act where the offence is triable jointly by a Magistrate and a Court of Session. *Id.* 802, 1865. Agra Sudder Court, November 5th, 1862.

The Calcutta High Court declared that it could not interfere in a case in which the Sessions Judge had refused to order the commitment of a person discharged by the Magistrate (Seetaram Chowdry, March 15th, 1865); also that Section 435 did not apply to the case of a European British subject discharged by a Justice of the Peace. Brae, 19th August, 1865.

* S. 13.

Power of Court of Session to direct bail.

436. The Court of Session* may direct that any accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

The provisions of this Section seem to apply only to offences within the jurisdiction of a Court of Session as a Court of original jurisdiction, since the powers of that Court, as a Court of Appeal, are restricted by Section 421, which allows the suspension of sentences passed for non-bailable offences and the release on bail only when the conviction has been for an offence which is bailable.

† S 11.

Deposit may be made instead of bail.

437. When any person is required by any Criminal Court† to give bail, it shall be lawful to such Court to permit such person to deposit a sum of money or Government promissory notes to such amount as such Court may fix in lieu of such bail.

‡ S 13.

Expenses of prosecutors and witnesses.

438. It shall be lawful for the Court of Session,‡ in any case in which it shall appear proper, to order payment by or on the part of Government of the reasonable expenses of any complainant or witnesses attending for the purpose of any trial before such Court under this Act.

The provisions of this Section do not apply to proceedings before a Magistrate.

§ S. 11.

No trial, &c., to be set aside for irregularity of procedure.

439. No trial held in any Criminal Court§ shall be set aside, and no judgment passed by any Criminal Court§ shall be reversed either on appeal or otherwise for any irregularity in the proceedings of the trial, unless such irregularity have occasioned a failure of justice.

See Section 426.

Copy of sentence or order to be furnished on application.

440. A copy of the final sentence or order passed by any Criminal Court* shall be furnished without delay on the application of any party to the case in which such sentence or order was passed. Such copy shall be made at the expense of the party applying for it, unless such party is in confinement under the sentence or order and is desirous of appealing against the same, or unless the Court shall for any special reason see fit to grant such copy free of expense.

The Government of India in Council (Notification 183, dated 8th January, 1863, Calcutta Gazette, p. 43,) issued an order under Act X of 1862, Section 33, exempting from Stamp duty copies of final sentences or orders passed by Criminal Courts, which parties desirous of appealing from such sentences or orders, are required by Section 416, Code of Criminal Procedure, to file with their petition of appeal, provided that the party desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same.

It is incumbent on every officer to give copies of his Judicial Orders to any applicant. When parties are not in Jail or when they produce stamped paper, copies should be given on such stamped paper: and where persons are in confinement, copies may be furnished on unstamped paper. This rule applies to all sentences, whether appealable, or not. The words "desirous of appealing" should not be confined to cases where by the letter of the law there may be a right of appeal Calcutta High Court, 454, 1863. Such copies must be granted whether the sentence or order is appealable or not. Agra Sudder Court, November 4th, 1863. On application made by the Magistrate of the District to the Sessions Judge for a copy of any judgment delivered by him, the Judge should permit a copy to be made by any person whom the Magistrate may depute for that purpose. Such copies will be granted to Magistrates and Committing Officers only for their information and guidance, they are not at liberty to cavil at the judgment of the Sessions Court, or enter into any discussion with the Judge upon its merits. Calcutta High Court, Cir. 1, 1864 When the Judge's notes form the only record of a case, the parties should be allowed to have copies of such notes on paying the authorised charge for making the same. 1, Madras, 138.

The Calcutta High Court (320, 1866), as a matter of convenience, has extended the terms of Section 440 to furnishing parties, on their application, with copies of the reasons recorded by Criminal Courts under Section 429 for passing a sentence or final order in a case.

Act not to take effect in Presidency Towns or Straits Settlement.

441. Nothing in this Act shall be held to alter or effect the jurisidiction or procedure of the Chief Commissioner of Police, the Police Magistrates, or the Police of the Towns of Calcutta, Madras, and Bombay and the Settlement of Prince of Wales' Island, Singapore, and Malacca, except so far as this Act expressly provides for the same.

CH XXXI
ss 442 & 443

Saving of jurisdiction and procedure of Heads of Villages, Village Police Officers, &c.

442. Nothing in this Act shall be held to alter or affect the jurisdiction, duties, or procedure of landholders specially empowered according to law in the Presidency of Bombay, nor to alter or affect the jurisdiction or procedure of the Heads of Villages in the Presidency of Fort Saint George, nor to alter or affect the jurisdiction, duties, or procedure of Village Police Officers in the Presidency of Bombay, nor to alter or affect the jurisdiction or procedure of any Officer duly authorized and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay respectively, for the trial of petty offences in Military Bazars at Cantonments and Stations occupied by the Troops of those Presidencies respectively.

Of Officers exercising jurisdiction over petty offences in Military Cantonments.

* s 19.

Sudder Court to make general rules for regulating proceedings, &c.

† s 11.

443. The Sudder Court* shall have power to make and issue general rules for regulating the practice and proceedings of that Court and of all Criminal Courts† subordinate to it, and also to frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it shall think necessary that a form should be provided, for keeping all books, entries, and accounts to be kept in such Courts, and for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts, and from time to time to alter any such rule or form, provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force. Any rules framed by the Court under this Section shall be published in the Official Gazette.

The following are the most important general orders of the Calcutta High Court which have not been quoted in the foregoing

CIRCULAR No 17, 1863

The High Court of Judicature are pleased to direct that every Judge of every Court, including all Magisterial Officers, whose duty it is to administer the law as contained in the Indian Penal Code and the Code of Criminal Procedure, shall from time to time report to his official superior, any doubt which he shall entertain as to the construction which he shall put upon any part of those Codes in the course of cases which shall come before him.

2 These reports must not be made on mere speculative questions or pending trial or enquiry, but after the cases shall have been actually tried, or, in cases of preliminary enquiry, after the enquiry has been concluded. If the report be made by the Magistrate of the District, it shall

be transmitted by him to the Judge. If it be made by any of the Magisterial Authorities subordinate to the Magistrate of the District, it shall be transmitted by him to the Judge with such remarks as he may think fit to make thereon. All reports, which shall be submitted to the Judge, unless in the case of reports made by officers subordinate to the Magistrate of the District in which he shall consider the doubt to be obviously unreasonable, shall be transmitted to this Court, with such remarks as he may deem necessary, and also with such portions (if any) of the correspondence which shall have taken place on the subject as he shall consider important to be considered by this Court. The Judge shall also forward the record of the case if he consider it necessary

3. In order to make as complete as possible any suggestions for the alteration of or amendment of the law which the Court may see fit hereafter to make to the Legislature, they are pleased to direct that a similar report shall be made, and forwarded in like manner to this Court, regarding any point upon which doubts have heretofore been entertained by the Criminal Authorities in the course of any trial or preliminary enquiry since the Penal Code became law, although prior to the promulgation of this Circular.

4 The Court are further pleased to direct that all references made under this Circular shall be in the Forms annexed.

Penal Code.

1	2	3	4	5	6	7	8
Section of Penal Code about which doubt is entertained.	Name of district and Officer's name & rank by whom reference is made, and No. of case on his file.	Abstract of doubtful point.	Opinion of Officer making reference.	Remarks (if any) by the Magistrate of the district, if transmitted through him.	Remarks (if any) by Sessions Judge.	Remarks by the Judges of the High Court.	Names of Judges of the High Court.

Section of Criminal Procedure Code about which doubt is entertained.	Name of district and name and rank of Officer making the reference. and No. of case on his file.	Abstract of doubtful point.	Opinion of Officer making the reference.	Remarks (if any) by the Magistrate of district if transmitted through him.	Remarks (if any) by Sessions Judge.	Remarks by the Judges of the High Court.	Names of Judges of the High Court.

CIRCULAR No. 5, 1865.

For the purpose of enabling Magistrates to ascertain whether parties charged before them with heinous offences, have been previously convicted of any of the offences for which enhancement of punishment is provided, on a second or subsequent conviction, by Section 75, Act XLV of 1860, and Section 4, Act VI of 1864, and for purposes of general statistical information, the High Court are pleased to direct that Registers be opened, in Magistrates' Offices, in the form appended to this Circular. These Registers should contain the names of parties convicted of any of the crimes specified on the margin, and should be in the Bengali or Urdu language and character, varying according to the Vernacular of the District.

1. Offences relating to Coin and Government Stamps (Chapter XII, P C).
2. Offences against Property (Chapter XVII, P. C)
3. Giving or fabricating false evidence (Sections 193 to 195, P C.)
4. Falsely charging any person with having committed an unnatural offence (Sections 211 and 377, P. C).
5. Assaulting or using criminal force to any woman with intent to outrage her modesty (Section 354, P C.).
6. Rape (Section 375, P. C.).
7. Unnatural offences (Section 377, P. C.).
8. Forgery (Sections, 465, 466, 467, 468, 469, P C).

Culpable homicide (Section 304).

Causing grievous hurt (Sections 323 to 326, and Sections 329, 331, 333, 335, 338).

2. Every conviction, as sentence is passed, must be entered in the Office of the Magistrate of the District by the Officer whose duty it is to keep the Register of Convictions. In cases committed to the Sessions, the entry will be made on sentence being passed by the Sessions Judge. If a prisoner be released on appeal, whether by the Judge or by the Magistrate, a note should be made in the column of remarks of the date and purport of the order of the Appellate Court.

3. Similar Registers should be kept up in the same manner, by Sub-Divisional Officers regarding the offences specified which may have been committed within their respective jurisdictions, and for which any persons may have been convicted. These Officers should report to the Magistrates the entries of the past month regularly at the commencement

of each successive month for incorporation in the general District Register.

4. To ensure the proper preparation and keeping up of the Register, the Magistrate or other Magisterial authority in charge shall require the Officer whose duty it is to prepare it to bring the Register for his inspection and signature at least once every week.

5. At the close of the year, an Alphabetical Register of the parties convicted within the 12 months should be made for facility of reference, and at the close of every fifth year an Alphabetical Register should be prepared from the Alphabetical Registers of the previous five years.

6. When a prisoner has been convicted more than once, a note to that effect should be made against his name in the Register opened for that purpose.

7 For the purpose of giving the foregoing Rules retrospective effect, an Alphabetical Register should be at once prepared in the form prescribed in this Circular Order of parties convicted since the date on which the Penal Code came into force, *i. e*, from the 1st January, 1862, to the end of 1864, the requisite information being derived from the Register of Convictions in the charge of the Record-keeper and of the Jailor.

Name of the Prisoner (including his alias if any).	Name of his Father	Residence.	Profession or Trade.	Caste.	Age or supposed age.	Height.	Personal marks, such as squint, lameness, loss of limb, permanent scars, &c.	Of what offence convicted.	Date of conviction.	Sentence passed.	Previous conviction.	Remarks.

CIRCULAR No. 6, 1865.

The Court having reason to believe that the terms of the late Sadder Court's Circular No. 20, dated 20th August, 1857, have in many cases been neglected, are pleased to call the attention of all Sessions Judges and Magistrates of Districts thereto, with the view to enforcing for the future a more general observance of its requirements.

2. The Circular is reproduced for easy reference.

3. If the Sessions Judges and Magistrates will from time to time visit their Record Rooms (as they should), there will, the Court think, be no difficulty in obtaining a proper arrangement of all their records. The Court desire to impress seriously upon all Officers the extreme importance of this work, for without a proper arrangement of its records, and a periodical clearance of all old and useless papers, the

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efficiency of a public office is much impaired. On the other hand, a neglect of this duty in the course of time leads to such confusion as invariably results in an application for an extra Establishment to perform a duty which, if regularity had been enforced in the office, should have been executed without any difficulty by the Establishment attached to that office The subject has recently been brought to notice by certain applications of this nature, which the Court have with considerable reluctance been compelled to submit to Government, but after this warning the Court wish to inform all Sessions Judges and Magistrates of Districts that they expect that the necessity for applications for extra Establishments will not arise, and that if any such applications are submitted, the Court will be compelled to hold the individual Officer personally responsible for an expense which must be held to have been caused solely by his carelessness and inattention to orders.

4. Mention of the state of their Record Rooms should invariably be made in the Criminal Reports of Sessions Judges and Magistrates. The Court will not be satisfied with a mere cursory mention, but require a clear description of the state of each Record Room, and the dates up to which the records have been sorted or destroyed, so that it may appear without doubt that this duty has in no way been neglected.

RULES.

I. Records of Sessions trials and heinous (*i. e.*, non-bailable) cases of Magistrates' Courts generally of above 14 years' date may unobjectionally be destroyed, a discretion being exercised at the same time by the Sessions Judges and Magistrates of preserving individual cases or papers on any grounds appearing to them sufficient; cases in which the sentences have not expired must invariably be preserved.

II. Provided that cases in which parties accused have hitherto eluded apprehension, shall always be preserved.

III. The above Rules should be acted on from year to year, so that no accumulation may occur beyond a term of 14 years in regard of the records of heinous (*i. e.*, non-bailable) cases.

IV. In regard to the records of the Magistrate's Court, the following may be destroyed yearly, if upwards of two years old, excepting those which the Magistrate may deem it prudent to preserve in consequence of the non-arrest of particular offenders or non-realization of fines. In cases of the last description, the records should be destroyed, at all events, after six years from the date of sentence :—

Security cases, if expired.
Petty (*i. e.*, bailable) trials
Act IV. of 1840 (re-enacted in Ch XXII, Act XXV of 1861)
Suits, excepting the decisions and documents, plaints and answers.
Miscellaneous cases.
Thannah Diaries.
Police Reports, in which no further proceedings followed.
Miscellaneous Ruboocarees.
Ditto Reports and Returns by the Nazir.
Copies of Perwannahs.
Ditto of Ishtahars.
Despatch Books.
Receipt Books of the Record Room.
Rough Order Books.
Witnesses' Attendance Books.

Miscellaneous Reports of the Jailor.
Miscellaneous Petitions.
Periodical Statement, except Register of petty (*i. e.*, bailable) cases.
Register of Mooktarnamahs excepting "general" ones.
Register of Miscellaneous cases
Ditto Petitions.

V. In regard to cases appealed to the Sessions Court, the Sessions Court record of such cases may be periodically destroyed after a term of six years. Thus, on the 1st January next, all appeal records of this nature may be destroyed appertaining to a date previous to 1st January 1853, (*i. e.*, at the present time, 1861).

Procedure of this Act to be followed in miscellaneous criminal cases and proceedings.

444. The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous criminal cases and proceedings which, after the passing of this Act, shall be instituted in any Court.

Commencement and operation of Act.

445. This Act shall come into operation in the Presidencies of Bengal, Madras, and Bombay on the 1st day of January 1862, but shall not take effect in any part of the territories in British India not subject to the General Regulations of Bengal, Madras, or Bombay, *until the same shall be extended thereto by the Governor-General of India in Council or by the local Government to which such territory is subordinate, and until such extension shall have been notified in the Gazette.*

APPENDIX OF FORMS.

A.

Form of Summons (*Section* 69).

To A. B., of

Whereas your attendance is necessary to answer to a charge of (*state shortly the offence charged :*) you are hereby required to appear in person or by authorized Agent, as the case may be, before the [Magistrate] of on the day of Herein fail not

(*Signature and Seal*)

Dated the day of

B.

Form of Warrant (*Section* 76).

To (*name and designation of the person or persons who are to execute the warrant.*)

Whereas of stands charged with the offence of (*state the offence*): You are hereby directed to apprehend the said and to produce him before me. Herein fail not.

(*Signature and Seal.*)

This warrant may be endorsed as follows:—

If the said shall give bail, himself in the sum of with one surety in the sum of (or two sureties each in the sum of) to appear before me on the day of he may be released.

Dated *Signature.*

C.

Form of Warrant of Commitment.

(*Section* 222.)

To Jailor of

Whereas of is charged with (*state the offence in respect of which the prisoner is charged, and the authority of the Committing Officer*): You are hereby required to receive the said into your custody in the said Jail of and him there safely to keep until he shall be thence delivered by due course of law.

Dated the day of

D.

Form of Bond to keep the Peace.

(*Section* 284.)

Whereas I inhabitant of have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said

term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of
Rupees.
Dated

Bail Bonds in Criminal cases are exempted from stamp duty, and should be written on plain paper. Act X. 1862, Schedule B., Art. II.

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above said that he shall not commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.
Dated

E.

FORM OF RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

(*Sections* 158 *and* 232.)

I of do hereby bind myself to appear at in the Court of at o'clock on the day of next, and then and there to prosecute (or, as the case may be, to prosecute and give evidence or to give evidence) in the matter of a charge of against one A. B.; and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of
Rupees.

Recognizances to prosecute or give evidence and personal recognizances for appearance are exempted from stamp duty, and should be written on plain paper. Act X. 1862, Schedule B., Art. II.

F.

FORM OF BOND FOR GOOD BEHAVIOUR (*Section* 300.)

Whereas I inhabitant of have been called to enter into a bond to be of good behaviour to Her Majesty the Queen, and to all her

subjects, for the term of , I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term, and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees.
Dated

Bail Bonds in Criminal cases are exempted from Stamp duty, and should be written on plain paper. Act X 1862, Schedule B, Art II

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety to the above said that he shall be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of Rupees.

SCHEDULE.

(Referred to in Section 22 and elsewhere in this Act.)

Explanatory Notes—1st —The entries in the 2nd and 6th Columns of this Schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the Offences and Punishments described in the several corresponding Sections of the Indian Penal Code, or even as abstracts of those Sections, but merely as references to the subject of the Section, the number of which is given in the 1st Column.

2nd.—The term "Whether bailable or not," in Column 5, is to be taken in connection with the provisions of Sections 212 and 213 of this Code.

3rd —Offences may be tried by a Court superior to the Court specifically mentioned in Column 7. For example, a Court of Session may try an offence entered in Column 7 as triable by a Magistrate

This explanatory note is evidently subject to the provisions of Section 359 which enacts that "except in the cases referred to in Section 172 of this Act, a Court of Session, as a Court of Original Criminal Jurisdiction, shall not take cognizance of any offence but upon a charge perferred by a Magistrate or other officer specially empowered under this Act or under any other law to make commitments to such Court." Section 172 authorises a Court of Session to institute criminal proceedings, and try cases regarding certain offences (*e. g.* contempts [Chapter X. Penal Code], offences against public justice, or offences relating to documents) exclusively within its jurisdiction, if they be committed before it or under its own cognizance.

4th.—Any offence which is triable by an Officer exercising the powers of a Magistrate, may be tried by a Subordinate Judge or a Principal Sudder Ameen in the Presidency of Fort St. George.

See Section 355.

5th.—The words "Magistrate of the District," as used in Column 7, shall include any Officer exercising the powers of a Magistrate.

6th —The words "any Magistrate," as used in Column 7, shall include any Subordinate Magistrate of the 1st or 2nd Class.

7th.—In the Territories in British India to which the General Regulations of Bengal, Madras. and Bombay do not extend, the powers given by this Act shall be exercised by such Officers as the Local Government of those territories respectively shall appoint.

CHAPTER V.—OF ABETMÉNT.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
111	When one act is abetted and a different act is done, subject to the proviso.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence intended to be abetted.	Ditto.
113	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence committed.	Ditto.
114	If abettor is present when offence is committed.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence abetted.	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.	Ditto.

	If an act which causes harm be done in consequence of the abetment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Imprisonment extending to ¼ part of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant, whose duty it is to prevent the offence.	Ditto.	Ditto.	Ditto.	Imprisonment extending to ½ of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence, which it is his duty to prevent, if the offence be committed.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Imprisonment extending to ½ of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years	Ditto.

CHAPTER V.—OF ABETMENT.—(*Continued.*)

1.	2.	3.	4.	5.	6.	7.
Section.	Offences.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence be not committed.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment extending to ¼ part of the longest term and of any description provided for the offence, or fine, or both.	By the Court by which the offence abetted is triable.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto.	Ditto.	Ditto.	Imprisonment extending to ¼ part of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
	If not committed.	Ditto.	Ditto.	Ditto.	Imprisonment extending to ⅛ part of the longest term and of the description provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war against the Queen.	Shall not arrest without warrant.	Warrant.	Not bailable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
125	Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto.	Ditto	Ditto.	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any power in alliance or at peace with the Queen.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in Sections 125 and 126.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
128	Public servant voluntarily allowing Prisoner of State or War in his custody to escape.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.—*(Continued.)*

1.	2.	3.	4.	5.	6.	7.
Section.	Offences.	Whether the Police may arrest without warrent or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
129	Public servant negligently suffering Prisoner of State or War in his custody to escape.	Shall not arrest without warrant.	Warrant.	Bailable.	Simple imprisonment for 3 years and fine.	Court of Session.
130	Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the re-capture of such prisoner.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years aud fine.	Ditto.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny or attempting to seduce an Officer, Soldier, or Sailor from his allegiance or duty.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny if mutiny is committed in consequence thereof.	Ditto.	Ditto.	Ditto.	Death or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.

133	Abetment of an assault by an Officer, Soldier, or Sailor, on his superior Officer when in the execution of his office.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
134	Abetment of such assault, if the assault is committed.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
135	Abetment of the desertion of an Officer, Soldier, or Sailor.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.
136	Harbouring an Officer, Soldier, or Sailor who has deserted.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons.	Ditto.	Fine of 500 Rs.	Ditto.
138	Abetment of act of insubordination by an Officer, Soldier, or Sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a Soldier, with intent that it may be believed that he is such a Soldier.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Any Magistrate.

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CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

1.	2.	3.	4.	5.	9.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
143	Being a member of an unlawful assembly.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
147	Rioting.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
148	Rioting armed with a deadly weapon	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence, or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence.	By the Court by which the offence is triable.

150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 3 years, or fine, or both	Court of Session or Magistrate of the District.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Fine of 1,000 Rupees.	Magistrate of the District, or Subordinate Magistrate of 1st Class
155	Person for whose benefit, or on whose behalf a riot takes place, not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Fine.	Ditto.
156	Agent of owner or occupier, for whose benefit a riot is committed, not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.

CHAPTER VIII.—OFFENCES AGAINST PUBLIC TRANQUILLITY.—(*Continued*)

1.	2.	3.	4.	5.	6	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
158	Being hired to take part in an unlawful assembly or riot.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
159	Or to go armed.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray.	Shall not arrest without warrant.	Summons.	Ditto.	Imprisonment of either description for 1 month, or fine of 100 Rs., or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the District.

164	Abetment by public servant of the offences defined in the last two preceding Sections with reference to himself.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 2 years, or fine, or both	Magistrate of the District, or Subordinate Magistrate of 1st Class
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District
168	Public servant unlawfully engaging in trade.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both	Magistrate of the District.
169	Public servant unlawfully buying or bidding for property.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 2 years, or fine, or both; and confiscation of property, if purchased.	Ditto.
170	Personating a public servant, ...	May arrest without warrant	Warrant.	Ditto.	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 3 months, or fine of 200 Rs, or both.	Ditto.

CHAPTER X—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.*
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Ditto
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Ditto.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Ditto.†
	If the order require personal attendance, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Ditto.

* By Act VIII. of 1866, Section 1, made triable by any Magistrate.
† By Act VIII. of 1866, Section 1, made triable by any Magistrate.

175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Court in which the offence is committed subject to the provisions of Ch X of this Code, or if not committed in a Court, the Magistrate of the District, or Subordinate Magistrate of 1st Class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Magistrate of the District.
	If the notice or information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 Rs, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
	If the information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*Continued.*

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Court in which the offence is committed, subject to the provisions of Ch X of this Code, or if not committed in a Court, the Magistrate of the District, or Subordinate Magistrate of 1st Class.
179	Being legally bound to state the truth, and refusing to answer questions.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so	Ditto.	Ditto.	Ditto.	Simple imprisonment for 3 months, or fine of 500 Rs, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District

182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of 500 Rs., or both.	Ditto.
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of 200 Rs, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto.*	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 200 Rs., or both.	Ditto.
	Wilfully neglecting to aid a public servant, who demands aid in the execution of process, the prevention of offences, &c.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 500 Rs, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 200 Rs., or both.	Ditto

* Cf. Code of Criminal Procedure, Section 100, clause 6.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*Continued*)

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code	By what Court triable.
	If such disobedience causes danger to human life, health or safety, &c.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine of 1,000 Rs, or both.	Magistrate of the District, or Sub-ordinate Magistrate of 1st Class
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto.*	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

* Cf. Code of Criminal Procedure, Section 100, clause 6.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant	Bailable.	Imprisonment of either description for 7 years and fine.*	Court of Session.
	Giving or fabricating false evidence in any other case.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.*	Ditto

194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	Ditto.	Not bailable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.*	Ditto.
	If innocent person be thereby convicted and executed	Ditto.	Ditto.	Ditto.	Death or as above.	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.	Ditto	Ditto.	Ditto	The same as for the offence.*	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto.	Ditto.	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.*	Ditto
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto.	Ditto.	Bailable.	The same as for giving false evidence.*	Ditto
198	Using as a true certificate one known to be false in a material point.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
200	Using as true any such declaration known to be false.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
	If punishable with transportation, or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.

* Also with whipping on a second conviction. Act VI. of 1864, Section 4.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If punishable with less than 10 years imprisonment.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment for ¼th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the District.
203	Giving false information respecting an offence committed.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.

207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto.	Ditto	Ditto.	Ditto.	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied	Ditto.	Ditto.	Ditto.	Ditto.	Magistrate of the District.
209	False claim in a Court of Justice.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto:	Ditto.	Ditto.	Ditto.	Ditto.
	If offence charged be capital or punishable with transportation for life, or imprisonment for 7 years, or upwards.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.*	Court of Session
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for 1 year, and not for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for ¼th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable

* If the false charge be the commission of an unnatural offence (as defined in Penal Code, S. 377), and there has been a previous conviction of this offence, whipping may be imposed as an additional punishment. Act VI. of 1861, Section 4.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*(Continued)*

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years and fine.	Court of Session
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for ¼th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session
	If punishable with transportation for life, or with imprisonment for 10 years	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for ¼th of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence is triable

215	Taking gift to help to recover moveable property, of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both	Magistrate of the District.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session
	If punishable with transportation for life, or with imprisonment for 10 years	Ditto.	Ditto	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for 1 year and not for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment for ¼th of the longest term and of the description provided for the offence, or fine, or both	By the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons.	Ditto	Imprisonment of either description for 2 years, or fine, or both	Magistrate of the District, or Subordinate Magistrate of 1st Class only.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session
219	Public servant in a judicial proceeding making or pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto.	Ditto	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—*(Continued.)*

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, with or without fine.	Court of Session.
	If punishable with transportation for life or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, with or without fine.	Ditto.
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years with or without fine.	Magistrate of the District, or Subordinate Magistrate of 1st Class
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for 10 years or upwards.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than 10 years.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the District.

223	Escape from confinement negligently suffered by a public servant.	Ditto.	Summons.	Ditto.	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If charged with an offence punishable with transportation for life or imprisonment for 10 years.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District.
	If charged with a capital offence.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If under sentence of death.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
226	Unlawful return from transportation.	Ditto.	Ditto.	Ditto.	Transportation for life, and fine, and rigorous imprisonment for 3 years before transportation.	Ditto.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons.	Ditto.	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued*)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 6 months, or fine of 1,000 Rs., or both.	Court in which the offence is committed, subject to the provisions contained in Chapter X. of this Code.
229	Personation of a juror or assessor.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting or performing any part of the process of counterfeiting Coin.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session
232	Counterfeiting or performing any part of the process of counterfeiting the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, and fine.	Ditto.

234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's Coin.	Ditto.	Ditto	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
235	Possession of instrument or material for the purpose of using the same for counterfeiting Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
236	Abetting in India the counterfeiting out of British India of Coin.	Ditto.	Ditto.	Ditto.	The punishment provided for abetting the counterfeiting of such Coin within British India.	Ditto.
237	Import or Export of counterfeit Coin, knowing the same to be counterfeit.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
238	Import or Export of counterfeits of the Queen's Coin, knowing the same to be counterfeit.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
239	Having any counterfeit Coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
240	The same with respect to the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
241	Knowingly delivering to another any counterfeit Coin as genuine which when first possessed the deliverer did not know to be counterfeit.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine of ten times the value of the Coin conterfeited, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.

CHAPTER XII—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—(*Continued*)

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Punishment under the Indian Penal Code.	By what Court triable.
242	Possession of counterfeit Coin by a person who knew it to be counterfeit when he became possessed thereof	May arrest without warrant	Warrant.	Not bailable.	Imprisonment of either description for 3 years and fine.	Court of Session
243	Possession of Queen's Coin by a person who knew it to be counterfeit when he became possessed thereof	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
244	Persons employed in a Mint causing Coin to be of a different weight or composition from that fixed by law.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
245	Unlawfully taking from a Mint any Coining instrument.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto
247	Fraudulently diminishing the weight or altering the composition of the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine	Ditto.
248	Altering appearance of any Coin with intent that it shall pass as a Coin of a different description.	Ditto.	Ditto.	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.

249	Altering appearance of the Queen's Coin with intent that it shall pass as a Coin of a different description.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of Coin possessed with the knowledge that it is be altered.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered Coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's Coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of Coin as genuine, which, when first possessed, the deliverer did not know to be altered.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine of ten times the value of the Coin.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
255	Counterfeiting a Government Stamp.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government Stamp.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government Stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—(*Continued.*)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
258	Sale of counterfeit Government Stamp.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
259	Having possession of a counterfeit Government Stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
260	Using as genuine a Government Stamp known to be counterfeit.	Shall not arrest without warrant	Ditto.	Ditto.	Imprisonment of either description for 7 years or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government Stamp, or removing from a document a Stamp used for it, with intent to cause wrongful loss to Government.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government Stamp known to have been before used.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
263	Erasure of mark denoting that Stamp has been used.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
265	Fraudulent use of false weight or measure.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.*

* By Act VIII. of 1866, Section 1, made triable by any Magistrate.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(*Continued.*)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
272	Adulterating food or drink for man intended for sale so as to make the same noxious.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
273	Selling any food or drink as food and drink for man, knowing the same to be noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation, known to have been adulterated.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation, as a different drug or medical preparation.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Ditto.*

278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto.	Ditto.	Fine of 500 Rs.	Ditto.*
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Ditto.*
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.†
281	Exhibition of a false light, mark, or buoy.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto.	Summons.	Ditto.	Imprisonment of either description for 6 months, or fine, of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto.	Ditto.	Ditto.	Fine of 200 Rs.	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, of 1,000 Rs., or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.*
286	So dealing with any explosive substance.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.*
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.†

* By Act VIII. of 1866, Section 1, made triable by any Magistrate.
† This 'Ditto' is not affected by the amendment of the foregoing. Act VIII. of 1866, Section 3.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(*Continued.*)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
288	A person omitting to guard against probable danger to human life, by the fall of any building, over which he has a right entitling him to pull it down or repair it.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 6 months, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.*
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto.	Ditto.	Fine of 200 Rs.	Ditto.*
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine, or both.	Ditto.†
292	Sale, &c., of obscene books, &c.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
294	Obscene songs.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

* By Act VIII. of 1866, Section 1, made triable by any Magistrate.
† This 'Ditto' is not affected by the amendment of the foregoing. Act VIII. of 1866, Section 3.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
297	Trespassing in a place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences Affecting Life.

302	Murder.	May arrest without warrant.	Warrant.	Not bailable.	Death, transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto.	Ditto.	Ditto.	Death.	Ditto.
304	Culpable homicide not amounting to murder if act by which the death is caused is done with intention of causing death, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Continued.*)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 10 years, or fine, or both.	Court of Session
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto.	Ditto.	Ditto.	Death, or transportation for life, or imprisonment for 10 years, and fine.	Ditto.
306	Abetting the commission of suicide.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If such act cause hurt to any person.	Ditto.	Ditto.	Ditto.	Transportation for life or as above.	Ditto.
308	Attempt to commit culpable homicide.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both	Ditto.
309	Attempt to commit suicide.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year and fine.	Magistrate of the District.
311	Being a thug.	Ditto.	Ditto.	*Not bailable.	Transportation for life, and fine.	Court of Session.

Of the causing of Miscarriage; of injuries to unborn children; of the exposure of infants; and of the concealment of births.

312 Causing miscarriage.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
If the woman be quick with child.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
313 Causing miscarriage without woman's consent.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
314 Death caused by an act done with intent to cause miscarriage.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
If act done without woman's consent.	Ditto.	Ditto.	Ditto.	Transportation for life or as above.	Ditto.
315 Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316 Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
317 Exposure of a child under 12 years by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	Ditto.	Bailable.	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318 Concealment of birth by secret disposal of dead body.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

CHAPTER XVI—OFFENCES AFFECTING THE HUMAN BODY—(*Continued*)

Of Hurt.

1	2.	3.	4.	5.	6.	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Punishment under the Indian Penal Code.	By what Court triable.
323	Voluntarily causing hurt.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 year, or fine of 1,000 Rs. or both.	Any Magistrate
324	Voluntarily causing hurt by dangerous weapons or means	May arrest without warrant	Ditto.	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.
325	Voluntarily causing grievous hurt.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session *
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto †
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto
328	Administering stupefying drug with intent to cause hurt.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto

* By Act VIII. of 1866, Section 1, made trable by "any Magistrate.

† This 'Ditto' is not affected by the amendment of the foregoing. Act VIII. of 1866, Section 3.

329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 10 years and fine.	Ditto.
334	Voluntarily causing hurt on grave and sudden provocation not intending to hurt any other than the person who gave the provocation.	Ditto.	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of 500 Rs., or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 4 years, or fine of 2,000 Rs., or both.	Court of Session or Magistrate of the District
336	Doing any act which endangers human life or the personal safety of others.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 250 Rs., or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 500 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
338	Causing grievous hurt by an act which endangers human life, &c.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 2 years, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
	Of wrongful Restraint and wrongful Confinement.					
341	Wrongfully restraining any person.	May arrest without warrant.	Summons.	Bailable.	Simple imprisonment for 1 month, or fine of 500 Rs., or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
343	Wrongfully confining for three or more days.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, in addition to imprisonment under any other Section.	Court of Session.

346	Wrongful confinement in secret.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the District.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
355	Assault or criminal force with intent to dishonor a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Ditto.	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.	Not bailable.	Ditto.	Any Magistrate.

* And, on a second conviction, with whipping. Act VI. of 1864, Section 4

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—*(Continued.)*

Of Criminal Force and Assault.—(Continued.)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	May arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 1 year, or fine of 1,000 Rs., or both.	Any Magistrate.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Simple imprisonment for 1 month, or fine of 200 Rs., or both.	Ditto.

Of Kidnapping, Forcible Abduction, Slavery, and forced Labor.

363	Kidnapping.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
364	Kidnapping or abducting in order to murder.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto.	Ditto.	Ditto.	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto.	Bailable.	Ditto.	Ditto.
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
372	Selling or letting to hire a minor for the purpose of prostitution.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
373	Buying or obtaining possession of a minor for the same purpose.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
374	Unlawful compulsory labor.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Continued*)

Of Rape.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
376	Rape.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.*	Court of Session
	Of Unnatural Offences.					
377	Unnatural offences.	May arrest without warrant.	Warrant	Not bailable.	Transportation for life, or imprisonment of either description for 10 years and fine.*	Court of Session

CHAPTER XVII—OF OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both †	Court of Session or Magistrate of the District ‡
380	Theft in a building, tent, or vessel.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.†	Ditto.§

381	Theft by a clerk or servant of property in possession of master or employer.	Ditto.	Ditto.	Ditto	Ditto †	Ditto.‖
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it or to retaining property taken by it	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 10 years and fine †	Court of Session

Of Extortion.

384	Extortion.	Shall not arrest without warrant	Warrant.	Bailable.	Imprisonment of either description for 3 years, or fine or both.	Court of Session, or Magistrate of the District.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto	Ditto.	Not bailable.	Imprisonment of either description for 10 years and fine.	Court of Session
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion	Ditto	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine †	Ditto.
	If the offence threatened be an unnatural offence	Ditto.	Ditto.	Ditto.	Transportation for life	Ditto.

* And, on second conviction with whipping. Act VI of 1864, Section 4 † Or with whipping Act VI of 1864, Section 2.

‡ By Act XXVIII of 1860, Section 1, made triable by "Court of Session or any Magistrate".

§ By Act VIII of 1866 Section 1, made triable by "any Magistrate"

‖ This 'Ditto' is not affected by the alteration in the foregoing. Act VIII, of 1866, Section 3.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of Extortion.—(Continued.)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
389	Putting person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 10 years and fine.*	Court of Session
	If the offence be an unnatural offence.	Ditto.	Ditto.	Ditto.	Transportation for life.	Ditto.

Of Robbery and Dacoity.

392	Robbery.	May arrest without warrant.	Warrant.	Not bailable.	Rigorous imprisonment for 10 years and fine.†	Court of Session.‡
	If committed on the highway between sunset and sunrise.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 14 years and fine.	Ditto.†
393	Attempt to commit robbery.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 7 years and fine.†	Ditto.‡
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years and fine.†	Ditto.§
395	Dacoity.	Ditto.	Ditto.	Ditto.	Ditto.†	Ditto.

396	Murder in dacoity.	Ditto.	Ditto.	Ditto.	Death, transportation† or life, or rigorous imprisonment for 10 years, and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
399	Making preparation to commit dacoity.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

* Or with whipping. Act VI. of 1864, Section 2. † And with whipping, on a second conviction. Act VI. of 1864, Section 4.
‡ By Act VIII. of 1866, Section 2, made triable by the "Court of Session or Magistrate of the District."
§ This "Ditto" is not affected by the alteration in the foregoing. Act VIII. of 1866, Section 3.

CHAPTER XVII—OFFENCES AGAINST PROPERTY—(*Continued*)

Of Criminal Misappropriation of Property

1	2	3.	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Punishment under the Indian Penal Code	By what Court triable
403	Dishonest misappropriation of moveable property or converting it to one's own use	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class
	If by clerk or person employed by deceased.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

Of Criminal Breach of Trust

406	Criminal breach of trust.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.

407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
408	Criminal breach of trust by a clerk or servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	Of the Receiving of Stolen Property.					
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 3 years, or fine, or both.*	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years, and fine.*	Court of Session.
413	Habitually dealing in stolen property.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.†	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.

* Or with whipping. Act VI. of 1864, Section 2.

† And, on a second conviction, with whipping. Act VI. of 1864, Section 4.

CHAPTER XVII—OFFENCES AGAINST PROPERTY—*(Continued.)*

Of Cheating

1	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
417	Cheating.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 1 year or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District or Subordinate Magistrate of 1st Class.
419	Cheating by personation.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the altering or destroying of a valuable security.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine.	Court of Session

Of Fraudulent Deeds and Dispositions of Property

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class
422	Fraudulent preventing from being made available for his creditors a debt or demand due to the offender.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

Of Mischief.

426	Mischief.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 Rupees or upwards.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class
428	Mischief by killing, poisoning, maiming, or rendering useless, any animal of the value of 10 Rupees or upwards	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—*(Continued)*

Of Mischief.—(Continued)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
429	Mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 Rupees or upwards.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	May arrest without warrant	Ditto.	Ditto.	Ditto.	Ditto.
431	Mischief by injury to public road, bridge, river, or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session

434	Mischief by destroying or moving, &c., a land-mark fixed by public authority.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 1 year or fine, or both.	Magistrate of the District or Subordinate Magistrate of 1st Class
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 Rupees or upwards.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance, with intent to destroy a house, &c.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last Section when committed by fire or any explosive substance.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY —*(Continued.)*

Of Criminal Trespass.

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
447	Criminal trespass.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 3 months, or fine of 500 Rs., or both.	Any Magistrate.
448	House-trespass.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for 1 year, or fine of 1,000 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.*
449	House-trespass in order to the commission of an offence punishable with death.	Ditto.	Ditto.	Not bailable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 2 years and fine.	Magistrate of the District, or Subordinate Magistrate of 1st Class.*

	If the offence is theft.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.*
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.†
453	Lurking house-trespass or house-breaking.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years and fine.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.‡	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class
	If the offence is theft.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.‡	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session.
456	Lurking house-trespass or house-breaking by night.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.
457	Lurking house-trespass or house breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.‡	Court of Session or Magistrate of the District.§

* By Act VIII. of 1866, Section 1, made triable by "any Magistrate"

† This "Ditto" is not affected by the foregoing alteration Act VIII of 1866, Section 3.

‡ Whipping is, by Section 2, Act VI. of 1864, made an *alternative* punishment for this offence under certain circumstances, and, by Section 4, it is further made an *additional* punishment also under special circumstances specified therein

§ By Act XXXIII of 1861, Section 2 made triable by Subordinate Magistrate of 1st Class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*Continued.*)

Of Criminal Trespass.—(Continued.)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence is theft.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 14 years and fine.*	Court of Session or Magistrate of the District †
458	Lurking house-trespass, or house-breaking by night after preparation made for causing hurt, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.

* Whipping is, by Section 2, Act VI. of 1864, made an *alternative* punishment for this offence under certain circumstances, and, by Section 4, it is made an *additional* punishment also under certain special circumstances specified therein.

† By Act XXXIII. of 1861, Section 2, made triable by Subordinate Magistrate of 1st Class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.*	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of Births, &c., kept by a public servant.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for 7 years and fine.*	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.*	Ditto.
468	Forgery for the purpose of cheating.	Ditto.	Ditto.	Ditto	Imprisonment of either description for 7 years and fine.*	Ditto.
469	Forgery for the purpose of harming the reputation of any person or knowing that it is likely to be used for that purpose.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for 3 years and fine.*	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto.	Ditto.	Ditto.	Punishment for forgery.	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under Section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under Section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

* Or, on a second conviction, with whipping. Act VI. of 1864, Section 4.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.—(*Continued.*)

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the document is a valuable security or will.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in Section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in Section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

Of Trade and Property-Marks.

482 Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant	Bailable.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
483 Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
484 Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property,	Ditto.	Summons.	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the District.
485 Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both	Ditto.
486 Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
487 Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the District, or Subordinate Magistrate of 1st Class.
488 Making use of any such false mark.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
489 Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class.

CHAPTER XIX—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

1.	2.	3.	4.	5.	6.	7.
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for 1 month, or fine of 100 Rs., or both.	Magistrate of the District, or Subordinate Magistrate of 1st Class
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 200 Rs., or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Ditto.	Ditto	Ditto.	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant	Warrant	Not bailable	Imprisonment of either description for 10 years and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	Ditto.	Ditto.	Bailable	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto.	Ditto.	Not bailable	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery.	Ditto	Ditto.	Bailable	Imprisonment of either description for 5 years, or fine, or both.	Ditto
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto	Ditto.	Imprisonment of either description for 2 years, or fine, or both	Magistrate of the District.

CHAPTER XXI—OF DEFAMATION.

1	2	3.	4.	5.	6.	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code	By what Court triable
500	Defamation.	Shall not arrest without warrant	Warrant.	Bailable.	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the District.
501	Printing or engraving matter knowing it to be defamatory	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XXII—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c, circulated with intent to cause mutiny or offences against the public peace.	Ditto.	Ditto.	Not bailable.	Ditto.	Magistrate of the District.

506	Criminal intimidation	Ditto.	Ditto.	Bailable.	Ditto.	Magistrate of the District, or Subordinate Magistrate of 1st Class.
	If threat be to cause death or grievous hurt, &c.	Ditto	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
507	Criminal intimidation by anonymous communication or having, taken precaution to conceal whence the threat comes.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, in addition to the punishment under above Section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the District.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Ditto.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 24 hours, or fine of 10 Rs, or both.	Any Magistrate.

CHAPTER XXIII—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term and of the description provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.

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APPENDIX A.

MISCELLANEOUS ACTS.

ACT No. XXXIII. OF 1861.

(Received the assent of the Governor-General on the 22nd November, 1861.)

An Act to amend the Schedule annexed to the Code of Criminal Procedure.

Whereas it is expedient to amend the Schedule annexed to the Code of Criminal Procedure, it is enacted as follows.

Amendment of the Schedule as regards Section 379 of the Penal Code.

I. In lieu of the words "Court of Session or Magistrate of the District" in column 7 of the Schedule annexed to the Code of Criminal Procedure, referring to Section 379 of the Indian Penal Code, there shall be read the words "Court of Session or any Magistrate."

"Court of Session" and "any Magistrate" are defined respectively in Section 13 of the Code and Explanatory note 7 at the commencement of the Schedule

Amendment of the Schedule as regards Section 457 of the Penal Code

II. In lieu of the words "Court of Session or Magistrate of the District" in the two clauses of column 7 of the said Schedule referring to the provisions contained in Section 457 of the Indian Penal Code, there shall be read the words "Court of Session or Magistrate of District, or Subordinate Magistrate of the 1st Class."

For the definitions of the terms "Court of Session," "Magistrate of the District," "Subordinate Magistrate of the 1st Class," see Sections 13, 14, 18, 22 of the Code and Explanatory note 5 of the Schedule

Construction.

III This Act shall be read and taken as part of the Code of Criminal Procedure.

ACT No VIII OF 1866.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 2nd March, 1866.)

An Act further to amend the Schedule annexed to the Code of Criminal Procedure.

Preamble

Whereas it is expedient further to amend the Schedule annexed to the Code of Criminal Procedure; It is enacted as follows:—

Amendment of Schedule as regards Sections 172, 174, 271, 277, 278, 279, 285, 286, 289, 290, 325, 380, 440, and 451, of the Indian Penal Code

1. In lieu of the words in the parts of column 7 of the said Schedule respectively referring to Sections 172, 174, 271, 277, 278, 279, 285, 286, 289, 290, 325, 380, 448, and 451, of the Indian Penal Code, there shall be read the words "Any Magistrate."

The term "any Magistrate" is explained in the 6th note to the Schedule of the Code.

2. In lieu of the words in the parts of the said column respectively referring to Sections 392 and 393 of the Indian Penal Code, there shall be read the words "Court of Session or Magistrate of the District."

Amendment of Schedule as regards Sections 392 and 393 of the Indian Penal Code.

The terms "Court of Session," "Magistrate of the District," are defined and explained in Sections 13, 14, 18, of the Code, and the 5th note to the Schedule.

Nothing in this Act to alter effect of the rest of the Schedule.

3. Nothing herein contained shall be taken to alter the effect which any other part of the said Schedule had immediately before the passing of this Act.

This Act to be read with the Code of Criminal Procedure.

4. This Act shall be read with and taken as part of the Code of Criminal Procedure.

ACT No. XV. OF 1862.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 1st May, 1862.)

An Act to amend the Code of Criminal Procedure.

Preamble.

WHEREAS it is expedient to amend the Code of Criminal Procedure in regard to the extension thereof to any parts of the Territories not subject to the General Regulations; It is enacted as follows:—

With what restrictions, &c., Code of Criminal Procedure may be extended to a Non-Regulation Province.

I. When, under the provisions of Section 445 of the Code of Criminal Procedure, the said Code has been or shall be extended to any part of the Territories not subject to the General Regulations of Bengal, Madras, or Bombay, it shall be lawful for the Governor-General in Council or for the local Government of such Territory to vest the Chief Officer charged with the Executive administration of a District in Criminal matters, by whatever designation such Officer is called, with power to try all offences not punishable with death, and under the provisions of the said Code to pass sentence of imprisonment of either description for a term not exceeding seven years, including such solitary confinement as is authorized by law, or fine, or both.

For the law regarding sentences of "solitary confinement," see Sections 73, 74, of the Indian Penal Code. That regarding sentences of "fine" is contained in Sections 63—70 of the same Code.

When Sudder Court consists of one Judge.

II. When the Sudder Court in any part of the Territories to which the said Code of Criminal Procedure has been or shall be extended as aforesaid, shall consist of a single Judge, such Judge shall have all the powers of two or more Judges of the Sudder Court under Sections 398, 401, and 420 of the said Code.

"Sudder Court" is by Section 19 of the Code defined to be the "highest Criminal Court of appeal or revision." Sections 398 and 401 relate to cases referred for the confirmation of sentences of death passed by Courts of Session, and Section 420 to the modification, amendment, or reversal by the Sudder Court of a sentence or order passed by a Lower Court.

Construction.

III. This Act shall be taken and read as part of the Code of Criminal Procedure.

ACT No. XVII. OF 1862.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 1st May, 1862.)

An Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure.

Preamble.

Whereas by Act XLV of 1860 a Penal Code has been prescribed for British India, and the said Code came into operation on the 1st day of January, 1862; and whereas by Act XXV. of 1861 a Code of Procedure is provided for the Courts of Criminal Judicature not established by Royal Charter, and the said Code likewise came into operation on the 1st day of January, 1862 in the Presidencies of Bengal, Madras, and Bombay, and was at the same time, or has since been, or hereafter may be extended to other parts of British India; and whereas it is expedient to repeal, in the manner hereinafter provided, certain Regulations and Acts relating to Criminal Law and Procedure; It is enacted as follows:—

Repeal of Regulations and Acts providing for the punishment of offences.

I. The several Regulations and Acts set forth in the Schedule hereunto annexed, so far as they provide for the punishment of offences, shall be held to have been and are hereby repealed from the 1st day of January 1862 in the Presidencies of Bengal, Madras, and Bombay, and in the other parts of British India, in which such Regulations and Acts or any of them were in force on the said 1st day of January, 1862, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the said 1st day of January, 1862.

Exception.

Repeal of Regulations and Acts not repealed by last Section, in places where Code of Criminal Procedure came into operation on 1st January, 1862

II. To the extent expressed in the Schedule annexed to this Act, the Regulations and Acts set forth therein, which are not repealed by the last preceding Section, shall, except in so far as they repeal the whole or any part of any other Regulation or Act. and except as to any offence committed before the said 1st day of January 1862, be held to have been and are hereby repealed from the said date in the Presidencies of Bengal, Madras, and Bombay, and in the other parts of British India in which such Regulations and Acts or any of them were in force on the said 1st day of January 1862, and in which the said Code of Criminal Procedure came into operation on such date.

Repeal of the same Regulations and Acts in places where the Code of Criminal Procedure did not come into operation on 1st January, 1862.

III. To the extent expressed in the Schedule annexed to this Act, the Regulations and Acts set forth therein, which are not repealed by Section I. of this Act, and which were in force on the said 1st day of January 1862, in any part of British India in which the said Code of Criminal Procedure did not come into operation on the said 1st day of January, 1862, shall, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the date on which the said Code shall have been or shall hereafter be extended to such part of British India, be held to have been or shall be repealed in such part

of British India from the date on which the said Code shall have been or shall be so extended thereto.

Procedure and powers in the investigation and trial of offences committed before 1st January, 1862.

IV. In the investigation and trial of offences committed before the said 1st day of January 1862, the Criminal Courts of the several grades and the Officers of Police shall, after the passing of this Act, be guided by the provisions of the Code of Criminal Procedure, so far as the same can be applied, wherever the said Code shall be in operation at the time of such investigation or trial; and for the trial and punishment of such offences such Courts shall exercise the jurisdiction and powers vested in them under the said Code of Criminal Procedure, provided that no person convicted of any such offence shall be liable to any other punishment than that to which he would have been liable, had he been convicted of such offence before the said first day of January, 1862, and that no such person, who shall claim the same, shall be deprived of any right of appeal or reference to a Sudder Court which he would have enjoyed, had the trial been held under any of the Regulations or Acts hereby repealed.

Procedure in the investigation and trial in places to which the Code of Criminal Procedure is extended after passing of this Act, of offences committed before date of extension.

V. In any part of British India to which the Code of Criminal Procedure shall be extended after the passing of this Act, the said Code shall, subject to the provisions of the last preceding Section, be followed in the investigation and trial of any offences committed before the date of such extension.

Saving of certain sentences passed for offences committed before Code of Criminal Procedure came into operation, by reason only of the procedure of that Code having been followed.

VI. No sentence passed before the passing of this Act for any offence which shall have been committed before the 1st day of January 1862, (or whenever the said Code of Criminal Procedure shall not have been extended to any place in British India on the said 1st day of January 1862, then before the date on which the said Code shall have been extended to such place) shall be liable to be quashed or set aside by reason only of the procedure in the investigation or trial of any such offence having been wholly or in part the procedure provided by the said Code of Criminal Procedure. Provided that if, in any such case, it shall appear that the accused party has been deprived of any right of appeal or reference to a Sudder Court, which he would have enjoyed, had the trial been held under any of the Regulations or Acts hereby repealed, the Sudder Court or the highest Court of Criminal Jurisdiction may call for the proceedings in the case and pass such order thereon as it may deem just and proper.

Proviso.

Saving of certain sentences passed, &c., before passing of this Act.

VII. Nothing in this Act shall affect any sentence or order passed or any proceeding held or any act done previously to the passing of this Act and in accordance with any Act or Regulation repealed by this Act.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Act XIII of 1835, ...	... ...	The whole Act.
Act XV of 1835, ...	... ...	The whole Act.
Act XVIII of 1835, ...	.. ..	The whole Act.
Act XX. of 1835, ...	... ...	The whole Act.
Act VI of 1836, ...	... ...	The whole Act.
Act XXX of 1836, ...	... ...	The whole Act.
Act XVIII. of 1837, ...	... ...	The whole Act.
Act XXI of 1837, ...	... ...	Section 4.
Act XXIII. of 1837, ...	... ...	The whole Act.
Act XXVII. of 1837, .	... ...	Section 12.
Act XXX of 1837, ...	... ...	The whole Act.
Act XXXIII. of 1837, ...	... ...	The whole Act.
Act XXXVII of 1837, ...	... ...	The whole Act.
Act III of 1838, ...	... ...	The whole Act.
Act IX of 1838, ...	. ...	The whole Act.
Act XXVI. of 1838, ...	... ...	The whole Act.
Act II of 1839, ..	... ...	The whole Act.
Act XVIII of 1839, ...	... ...	The whole Act.
Act XIX of 1839, ...	... ...	The whole Act.
Act I of 1840, ...	An Act for regulating the procedure on trials referred to the Court of Foujdaree Adawlut at Madras,	The whole Act.
Act IV. of 1840, ...	An Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, within the Presidency of Fort William in Bengal,	The whole Act.
Act V. of 1840, ...	An Act concerning the oaths and declarations of Hindoos and Mahomedans,	Sections 2 and 3
Act XI. of 1840, ...	An Act for the Presidency of Bombay, amending the law concerning prisoners sentenced to labor or solitude,	Sections 2 and 3.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Act XVII. of 1841. ...	An Act for amending the proceedings in appeals before the Courts of Sudder Dewanny and Nizamut Adawlut in the Presidency of Fort William in Bengal,	Section 2, so much as was not repealed by Act X. of 1861.
Act XXI. of 1841, ...	An Act for the better prevention of local nuisances,	The whole Act.
Act XXX of 1841, ..	An Act for repressing obstructions to justice in certain Courts of the East India Company,	Section 1.
Act XXXI. of 1841, ..	An Act for amending the provisions of the Bengal Code touching Criminal Appeals, and the revision of sentences and orders of Criminal Courts,	The whole Act.
Act VIII of 1842, ...	An Act for describing in Legislative Acts, with greater certainty and convenience, the Courts of the highest jurisdiction in the respective Presidencies,	The whole Act.
Act XVIII. of 1842, ...	An Act for facilitating preliminary investigations of criminal cases connected with the collection of the revenue within the Presidency of Bombay,	The whole Act.
Act IV. of 1843, ...	An Act for amending the law concerning appeals from Justices of the Peace, and from Magistrates acting under the Statute 53 Geo. III. c. 155,	The whole Act.
Act VII of 1843, ...	An Act for abolishing the Provincial Courts of Appeal and Circuit in the Presidency of Fort Saint George, and for establishing new Zillah Courts to perform their functions; for establishing Courts constituted according to Regulations I. and II. and Regulations VII and VIII. of 1827, in place of the existing Civil and Criminal Zillah Courts, and for extending the civil jurisdiction of such Courts,	Sections 27, 29, 30, 31, 32, 33, 34, 36, 37, 41, 42, 43, 51, 54, 55 and 56.
Act XV of 1843, ...	An Act for the more extensive employment of Uncovenanted Agency in the Judicial Department,	In so far as it relates to the powers of Deputy Magistrates or Judicial Officers.
Act XXIV. of 1843, ...	An Act for better prevention of the crime of dacoity,	The whole Act.

Act III. of 1844, ...	An Act for legalizing the infliction of corporal punishment in cases of petty larceny generally, and when committed by offenders of tender age,	The whole Act.
Act XIV. of 1844, ...	An Act for regulating the proceedings of the Sudder Courts at Fort William, Fort St. George, Bombay, and at Agra, in regard to sentences of transportation for life,	The whole Act.
Act II. of 1845, ...	An Act for regulating the punishment of adultery in the Courts of the East India Company, in the Territories subject to the Presidency of Bombay,	The whole Act.
Act X. of 1845, ...	An Act for empowering Courts to issue warrants in cases of failure to serve summons,	The whole Act.
Act XVIII. of 1845, ...	An Act for the punishment of offences committed by convicts sentenced to imprisonment for life,	The whole Act.
Act XXVII. of 1845, ...	An Act for enabling Assistant Magistrates vested with special powers to decide cases under the provisions of Act IV. of 1840.	The whole Act.
Act XXX. of 1845, ...	An Act for enabling Session Judges within the Madras Presidency to award fines in compensation to injured parties,	The whole Act.
Act VII. of 1846, ...	An Act regarding the deposit of diet money for witnesses in petty cases,	The whole Act.
Act X. of 1847, ...	An Act for amending Act XXX of 1836,	The whole Act.
Act XX. of 1847, ...	An Act for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called copyright therein,	Section 4.
Act I. of 1848, ...	An Act to regulate the proceedings in certain cases of forgery,	The whole Act.
Act III. of 1848, ...	An Act for removing doubts as to the meaning of the words "thug" and "thuggee," and the expression "murder by thuggee," when used in the Acts of the Council of India,	The whole Act.
Act V. of 1848, ...	An Act to amend the law regarding the taking of Mochulkas or penal recognizances,	The whole Act.
Act XI. of 1848, ...	An Act for the punishment of wandering gangs of thieves and robbers.	The whole Act.
Act XIX. of 1848, ...	An Act for better defining the law as to revision of the sentences of subordinate Criminal Courts in the Presidencies of Bengal and Madras,	The whole Act.

SCHEDULE OF REGULATIONS AND ACTS REPEALED

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Act IV. of 1849, ...	An Act for the safe custody of Criminal lunatics, ...	The whole Act.
Act XIV. of 1849, ...	An Act to punish tampering with the Army or Navy, ...	The whole Act.
Act VII. of 1850, ...	An Act for better defining the law as to the removal of prisoners,	The whole Act.
Act XIII. of 1850, ...	An Act for punishing breaches of trust,	The whole Act.
Act XVI. of 1850, ...	An Act for the restitution of the value of stolen property, ...	The whole Act.
Act XXXVIII. of 1850, ...	An Act to allow Counsel to all persons on the trial of offences, ...	The whole Act.
Act IV. of 1851, ...	An Act for the appointment of Uncovenanted Deputy Magistrates, and for defining the duties of Deputy and Assistant Magistrates in Bombay,	The whole Act.
Act XVI. of 1851, ...	An Act for the trial of receivers of stolen property, ...	The whole Act.
Act XXXII. of 1852, ...	An Act to facilitate the prosecution of certain Ministerial and Police Officers for certain criminal acts,	The whole Act.
Act I of 1853, ...	An Act for providing in the Presidencies of Fort St. George and Bombay for the punishment of males of tender age for petty thefts,	The whole Act.
Act VII. of 1854, ...	An Act for the apprehension within the Territories under the Government of the East India Company, of persons charged with the commission of heinous offences beyond the limits of the said Territories, and for delivering them up to justice, and to provide for the execution of warrants in places out of the jurisdiction of the authorities issuing them,	So much of the Act as relates to warrants issued otherwise than under the provisions of the said Act.
Act X. of 1854, ...	An Act for regulating the powers of Assistants to Magistrates and of Deputy Magistrates appointed under Act XV. of 1843,	So much of Section 1 as recites that the order passed by any Assistant or Deputy Magistrate shall be subject to appeal, and Sections 2 and 3.
Act XII. of 1854, ...	An Act for conferring Criminal jurisdiction upon District Moonsiffs in the Presidency of Madras,	The whole Act.
Act XV. of 1855 ...	An Act to amend Regulation III. of 1833 of the Bombay Regulations,	The whole Act.

Act XVI. of 1855,	... An Act to amend the law in force in the Presidency of Bombay concerning the use of badges,	The whole Act.
Act XIX. of 1855,	... An Act to amend the law relating to District Moonsiffs in the Presidency of Fort St. George,	Section 5.
Act I. of 1856,	... An Act to prevent the sale or exposure of obscene books and pictures,	The whole Act.
Act II. of 1856,	... An Act to enable Magistrates and certain other Officers to take cognizance of certain offences without requiring a written complaint,	The whole Act.
Act IV. of 1856,	... An Act to prevent the malicious or wanton destruction of Cattle,	The whole Act.
Act XVII. of 1856,	... An Act to provide for the execution of Criminal process in places out of the jurisdiction of the authority issuing the same, ...	The whole Act.
Act III. of 1857,	... An Act relating to trespasses by Cattle, ...	So much of Section 13 as provides that offences under the said Section shall be dealt with by the Police Officers according to the provisions of Section 25, Regulation XX. of 1817 of the Bengal Code, Section 27, Regulation XI of 1816 of the Madras Code, and Section 43, Regulation XII. of 1827 of the Bombay Code.
Act VII. of 1857,	.. An Act for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort St. George,	Section 4.
Act XI. of 1857,	... An Act for the prevention, trial, and punishment of offences against the State,	Sections 1 and 2.
Act XXIV. of 1859,	... An Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George,	Sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41. 42 and 43, and so much of the Schedule as repeals Clause 1, Section 11, of Regulation XI. of 1816.
Act III. of 1860,	... An Act to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court,	The whole Act.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Act XVII. of 1860, ...	An Act to repeal Act V. of 1858 (for the punishment of certain offenders who have escaped from Jail, and of persons who shall knowingly harbour such offenders, and to make certain provisions in lieu thereof,)	Section 11.
Act XXXV. of 1860, ...	An Act relating to the transportation of convicts, ...	The whole Act.
Act XXII. of 1861, ...	An Act to amend Act III. of 1857 (relating to trespasses by Cattle),	Sections 1, 2, 3, 4 and 5.
	BENGAL.	
Regulation IX. of 1793, ...	A Regulation for re-enacting, with alterations and modifications, the Regulations passed by the Governor-General in Council, on the 3rd December, 1790, and subsequent dates, for the apprehension and trial of persons charged with crimes or misdemeanors,	Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16. 17, 18, 23, 26, 27, 29, 47, 48, 49, 50, 51, 53. 54, 56, 57, 58, 61, 64, 65, 74, 75, 77 and 78.
Regulation XIII of 1793, ...	A Regulation for the appointment of the Ministerial Officers of the Civil and Criminal Courts of Judicature, and prescribing their respective duties,	Sections 9 and 11.
Regulation XXII. of 1793, ...	A Regulation for re-enacting, with alterations and amendments, the Regulations passed by the Governor-General in Council, on the 7th December, 1792, for the establishment of an efficient Police throughout the country,	Sections 10, 16, 22, 31, 32, 33, 34, and 38.
Regulation VII. of 1794, ...	A Regulation for enabling one Judge of Circuit to hold the Courts for the half-yearly and monthly gaol deliveries; and for empowering one of the Judges of the Provincial Court of Appeal in each division to remain at the Sudder Station to transact certain parts of the business of the Court, whilst the other Judges are making the Circuit; and for providing against the absence or indisposition of the Judges or their Law Officers, and against vacancies in the Judicial and Law appointments,	The whole Regulation.

Regulation XVI. of 1795, ...	A Regulation for the apprehension and trial of persons charged with crimes or misdemeanors in the Province of Benares; for enabling one of the Judges, in his capacity of Judge of the Provincial Court of Appeal, to transact certain parts of the business of that Court whilst the other two Judges, as Judges of Circuit, are making the Circuits; and for providing against the absence or indisposition of any of the Judges or their Law Officers and against vacancies in the Judicial or Law appointments,	Section 4, Clause 1, in so far as it extends the provisions of Regulation IX, of 1793, which are repealed by this Act, and Clauses 2, 4, and 5, and the following Sections of the Regulation.
Regulation XVII. of 1795, ...	A Regulation for the establishment of an efficient Police in the Province of Benares,	Sections 10, 20, 29, 30, 31, 32, and 35.
Regulation XXI. of 1795, ...	A Regulation for preventing Brahmins in the Province of Benares establishing koorhs, wounding or killing their female relations or children, or sitting dhurna; and for preventing the tribe of Rajcoomars in that Province killing their female children,	The whole Regulation.
Regulation II. of 1796, ...	A Regulation for the guidance of the Zillah and City Magistrates in the Provinces of Bengal, Behar, Orissa, and Benares, in apprehending and bringing to trial European British subjects charged with acts which may render them liable to a Criminal prosecution,	The whole Regulation.
Regulation IX. of 1796, ...	A Regulation for the more certain ascertainment of the witnesses whom prisoners committed for trial before the Courts of Circuit may be desirous to have examined in their defence; and of the causes of the non-attendance of any witnesses named by prisoners or prosecutors, to give evidence before the Courts of Circuit,	The whole Regulation.
Regulation XI. of 1796, ...	A Regulation for providing against resistance to the processes of the Zillah and City Courts and Police Officers, as well as for compelling the appearance of persons charged with acts of a Criminal nature, who may abscond, or otherwise evade the process issued against them,	The whole Regulation.
Regulation II. of 1797, ...	A Regulation for defining more specifically the responsibility of the landholders and farmers of land in the Province of Benares, under the charge of the Police vested in them, conformably to their engagements by Regulation XVII. 1795,	Section 3.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act	Title of Regulation or Act.	Extent of Repeal.
Regulation IV. of 1797, ...	A Regulation for making sundry alterations in, and additions to, Regulation IX. 1793,	The whole Regulation.
Regulation XIII of 1797, ...	A Regulation for the occasional exercise of Judicial powers by the Assistants to the Zillah and City Magistrates in the Provinces of Bengal, Behar, Orissa, and Benares,	The whole Regulation.
Regulation XIV of 1797, ...	A Regulation for empowering the Court of Nizamut Adawlut to extend relief to certain prisoners sentenced to deyut and pecuniary fines, or to restore stolen property, or the value of it, and to remain in confinement until the completion of their sentences, also for preventing sentences of the same nature in future; and for drawing the distinction between the Courts of Civil and Criminal Jurisdiction more clearly and obviously,	The whole Regulation.
Regulation III. of 1798, ...	A Regulation for establishing annual vacations of the Civil Courts of Justice; for postponing the commencement of the half-yearly gaol deliveries during such vacations; and for establishing a fixed order of succession in the gaol deliveries of the several zillahs and cities throughout the Provinces of Bengal, Behar, Orissa, and Benares,	The whole Regulation.
Regulation II of 1799, ...	A Regulation for monthly gaol deliveries in the cities of Dacca, Moorshedabad, and Patna; and for declaring convicts who may escape from confinement during their sentences liable to transportation,	The whole Regulation
Regulation IV of 1799, ...	A Regulation for the trial of persons charged with crimes against the State,	The whole Regulation.
Regulation VIII. of 1799, ...	A Regulation for certain modifications of the Mahomedan law in cases of murder; and to explain parts of Regulation XXI. of 1795 and Regulation V. of 1797, in cases of dhurna,	The whole Regulation.
Regulation X. of 1799, ...	A Regulation to prevent delay in the transmission of the records of trials referred to the Court of Nizamut Adawlut,	The whole Regulation.

Regulation III. of 1801, ...	A Regulation for putting a stop to the practice, which prevails in many parts of the Company's Provinces, of parties in Civil suits preferring unfounded accusations of perjury against the witnesses in such suits and unfounded charges of subornation of perjury against the adverse parties in such suits,	The whole Regulation.
Regulation VIII. of 1801, ...	A Regulation for modifying the Mahomedan law in certain cases of kutl khota, or accidental homicide, and in other cases of the like nature,	The whole Regulation.
Regulation VI. of 1802, ...	A Regulation for preventing the sacrifice of children at Sangor and other places,	The whole Regulation.
Regulation VI. of 1803, ...	A Regulation for the guidance of the Magistrates of the several zillahs in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company, in apprehending persons charged with crimes or offences, and bringing them to trial,	The whole Regulation, with exception to Sections 3 and 34.
Regulation VII. of 1803, ...	A Regulation for the establishment of a Court of Circuit for the trial of persons charged with crimes, in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company,	From Section 5 to Section 41, both inclusive.
Regulation VIII. of 1803, ...	A Regulation for extending the jurisdiction of the Nizamut Adawlut to the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company,	The whole Regulation, with exception to Section 6, 24, and 26.
Regulation XII. of 1803, ...	A Regulation for the appointment of the Ministerial Officers of the Civil and Criminal Courts of Judicature in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company,	Sections 12 and 14.
Regulation XX. of 1803, ..	A Regulation for the trial of persons charged with crimes against the State, in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company,	The whole Regulation.
Regulation XXXV. of 1803,	A Regulation for the establishment of an efficient system of Police in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company,	Section 3. Clauses 3, 4, and 5, and Section 10.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation L. of 1803, ...	A Regulation for extending, with modications, to the Criminal Courts, the rules prescribed in Regulation IV. 1793, for procuring the attendance of witnesses and requiring oaths or solemn declarations from witnesses in the Civil Courts, and for explaining those rules in their application to particular forms of oath by the Courts, Civil and Criminal,	The whole Regulation.
Regulation LIII. of 1803, ...	A Regulation for determining the punishment to be adjudged by the Criminal Courts of Judicature, in cases wherein a discretion is left by the Mahomedan law; for defining the crime and punishment of robbery by open violence; and for declaring what convicts shall be hereafter liable to transportation, or to banishment: as well as the punishment of such as may return from transportation, or escape from confinement, during the periods of their sentences,	The whole Regulation.
Regulation III. of 1804, ...	A Regulation for providing against resistance to the processes of the Zillah Criminal Courts and Police Officers, as well as for compelling the appearance of persons charged with acts of a criminal nature, who may abscond, or otherwise evade the process issued against them: for rendering prosecutions instituted for the recovery of losses sustained by theft and robbery, cognizable in the Courts of Civil Judicature; and for ascertaining the responsibility in such cases of Tehseeldars of places held khaum, for amending certain parts of Regulation VI. 1803, for preventing the offence of dhurna, and for preventing the tribe of Raj Coomars killing or causing the death of their female children in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company,	The whole Regulation.
Regulation IV. of 1804, ...	A Regulation for the administration of justice in Criminal cases in the Zillah of Cuttack,	Proviso in Section 7.

Regulation IX of 1804, ...	A Regulation for altering the denomination of the Court of Circuit and the Provincial Court of Appeal for the division of the Ceded Provinces; for the administration of justice in Criminal cases, in the conquered Provinces in the Doab, and on the right bank of the river Jumna, and in the Territory ceded to the Honorable the English East India Company in Bundlecund by the Peishwa,	So much of the Regulation as extends the whole or any part of Regulations VI VII. VIII. XX XXXV. and LIII. of 1803 which are repealed by this Act, to the Districts mentioned in Sections 3 and 4; Sections 5 and 6; and the proviso in Section 11
Regulation III. of 1805, ...	A regulation to make further provision for the exemplary punishment of robbery by open violence,	The whole Regulation.
Regulation VII of 1805, ...	A Regulation for extending to the conquered Provinces situated within the Doab and on the right bank of the river Jumna, and to the Territory ceded to the Honorable the English East India Company in Bundlecund by the Peishwa, such of the Laws and Regulations established for the internal Government of the Provinces ceded by the Nawaub Vizier to the Honorable the English East India Company, as have not been already extended to those Territories, and for revising and amending certain parts of the said Laws and Regulations,	Section 14.
Regulation I of 1806, ...	A Regulation for abolishing the jurisdiction of Zillah Moorshedabad, and annexing the Mehals composing it to the jurisdictions of the City of Moorshedabad and Zillah Beerbhoom; for altering the jurisdiction of the Courts of Circuit and Provincial Courts of Appeal of the Divisions of Calcutta and Moorshedabad; for fixing the order of holding the half-yearly Jail deliveries in those Divisions, and in the Divisions of Benares and Bareilly; for rescinding such parts of the existing Regulations as restrict the senior Judges of the Courts of Circuit from proceeding upon the circuit in their respective Divisions; and for extending the authority of the Courts of Nizamut Adawlut and Sudder Dewanny Adawlut in certain cases,	Sections 6, 7, 8, and 9.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation XII. of 1806, ...	A Regulation for annexing the Pergunnahs of Sonk, Sonsa, and Sahar, situated on the right bank of the River Jumna, to the jurisdiction of the Zillah of Agra, and for extending to those Pergunnahs the Laws and Regulations established for the internal Government of the Ceded and Conquered Provinces,	Section 3, in so far as it extends the parts of Regulation IX. of 1804 and Regulation VIII. of 1805, and the other Regulations therein referred to, which are repealed by this Act.
Regulation XV. of 1806, ...	A Regulation for the amendment of certain parts of the provisions contained in Clauses 2 and 3, Section 2, Regulation II. 1796, and Clauses 2 and 3, Section 19, Regulation VI. 1803, and of the rule contained in Section 7, Regulation V. 1799,	The whole Regulation.
Regulation II. of 1807, ...	A Regulation to provide more effectually for the punishment of perjury, subornation of perjury, and forgery,	The whole Regulation.
Regulation IX. of 1807, ...	A Regulation for explaining and amending the existing rules of Criminal process, and for defining in certain cases the powers and duties of the Police Officer, of the Zillah and City Magistrates and of their Assistants, of the Courts of Circuit, and of the Court of Nizamut Adawlut,	The whole Regulation.
Regulation XIV. of 1807 ...	A Regulation for amending the system of Police established in the Province of Benares and in the Ceded and Conquered Provinces within the divisions of Bareilly and Benares; also for extending to those Provinces the provisions contained in Regulation XII. of 1807, for the appointment of Ameens of Police,	Section 11, Clauses 7, 8, 9, 10, 11, and 12, Section 20, and Section 21,
Regulation VIII. of 1808, ...	A Regulation for the more exemplary punishment of robbery by open violence; and for modifying the rules in force respecting trials referred to the Court of Nizamut Adawlut,	The whole Regulation.
Regulation I. of 1810, ...	A Regulation for occasionally dispensing with the attendance and futwa of the Law Officers of the Courts of Circuit,	The whole Regulation.

Regulation VI. of 1810, ...	A Regulation for defining the penalties to which zemindars and others shall be subject for neglecting to give due information of robberies, and for harbouring robbers,	Sections 3, 4, and 5.
Regulation XIV. of 1810, ...	A Regulation for defining the powers of the Court of Nizamut Adawlut in cases of pardon and mitigation of punishment; and for declaring the competency of the Courts of Circuit to admit prisoners to bail, in certain cases, during a reference of their trials to the Nizamut Adawlut,	The whole Regulation.
Regulation I. of 1811, ...	A Regulation for making more adequate provision for the punishment of persons found guilty of the offence of breaking into houses, tents, or boats; for subjecting to exemplary punishment persons receiving or purchasing plundered or stolen property; and for granting licences to gold or silversmiths, braziers, or coppersmiths, ironsmiths, pawn-brokers, retail vendors of brass or copper-wares, and pykars or itinerant dealers in second-hand articles,	The whole Regulation except so much of Section 10 as declares Landholders and others accountable for the early communication to the Magistrate of information respecting receivers of stolen goods
Regulation VII of 1811, ...	A Regulation for limiting and better defining the powers of the Police darogahs, and of zemindars invested with the charge of the Police, with respect to persons charged with or suspected of the commission of public crimes and offences,	The whole Regulation.
Regulation X. of 1811, ...	A Regulation for preventing the importation of slaves from foreign countries, and the sale of such slaves in the territories immediately dependent on the Presidency of Fort William,	Section 3.
Regulation XIV. of 1811, ...	A Regulation for amending the provisions of the existing Regulations respecting the punishment of Criminals by transportation, and for modifying the rules in force regarding the Officers of Judge and Magistrate of the Twenty-four Pergunnahs,	The whole Regulation.
Regulation III of 1812 ...	A Regulation for amending some of the Rules at present in force in regard to the conduct of inquiries into charges of a criminal nature, and for establishing additional provisions with a view to the more effectual apprehension of Criminals,	Sections 2 and 3, so much of Section 4 as provides a punishment for the offence mentioned in the Section, Section 6, and Sec. 12.
Regulation VII of 1813, ..	A Regulation for extending to the Ceded and Conquered Provinces the provisions contained in Regulation III 1801, and in Section 13, Regulation VIII 1794, and for rescinding parts of Sections 11 and 15, Regulation I 1803,	Section 3.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act	Title of Regulation or Act.	Extent of Repeal.
Regulation IX. of 1813, ...	A Regulation for restoring the punishment of transportation,	The whole Regulation.
Regulation VIII. of 1814, ...	A Regulation for extending the provision contained in Clause 2, Section 4, Regulation III. 1812, to cases of murder, arson, and theft,	So much of Section 2 as provides a punishment for the offence mentioned in the Section.
Regulation XI. of 1814, ...	A Regulation to make further provision for the punishment of persons convicted of breaking into, or attempting to break into houses, tents, boats, or other places of habitation, or into ware-houses or other places used for the custody of property, with an intent to steal,	The whole Regulation.
Regulation XV. of 1814, ...	A Regulation to define the punishment to which persons convicted of two or more offences shall, in certain cases, be subject,	The whole Regulation.
Regulation XIV. of 1816, ...	A Regulation to provide more effectually for the management of the public Jails; and to enable the Magistrates to maintain good order and discipline in those Jails; as well as among the prisoners employed on the public roads or other public works. Also to place the Jail at Alipore in the vicinity of Calcutta under the inspection and control of the Court of Nizamut Adawlut; and to provide for the transportation of convicts to the Island of Mauritius or its immediate dependencies,	Sections 9 and 15.
Regulation XVII. of 1816, ...	A Regulation for the occasional revision of the regular Police and Jail establishments, for the due support and regulation of the establishments of Chowkeedars, for amending the Rules in force for the appointment and removal of Police Officers, for modifying the constitution of the Officers of the Superintendents of Police, and for reducing the miscellaneous business of Courts of Circuit, and Court of Nizamut Adawlut,	Section 8, Clauses 3 and 4.
Regulation XVII. of 1817, ...	A Regulation to provide for the more effectual administration of Criminal Justice in certain cases,	The whole Regulation.

Regulation XX. of 1817, ...	A Regulation for reducing into one Regulation, with amendments and modifications, the several rules which have been passed for the guidance of Darogahs and other subordinate Officers of Police; for modifying the existing rules concerning the resistance or evasion of Criminal process, and for requiring further aid to the Police in certain cases, from proprietors and farmers of land and their local managers, as well as from the munduls and other heads of villages,	Clauses 3 and 4 of Section 6, Clauses 5, 6, and 7 of Section 8, Sections 9, 12, 13, 14, 15. 16, 17, 18, 19, 20, 22, 23, 24, 25, and 26.
Regulation VI. of 1818, ...	A Regulation for providing against the protracted confinement of persons charged with Criminal offences, during the examination of such charges before the Magistrates; and for defining the powers of the Courts of Circuit at the Sudder Stations of those Courts with respect to persons committed or held to bail by the Magistrates for trial at the periodical Sessions of Jail delivery,	The whole Regulation.
Regulation VIII. of 1818, ...	A Regulation for rescinding part of Clause 6, Section 2, Regulation LIII. 1803, for modifying some of the existing rules relating to the requisition of security for good behaviour; and for providing for a revision of the cases of certain classes of prisoners detained in confinement, on failure to furnish security for their good behaviour and appearance,	The whole Regulation.
Regulation XII. of 1818, ...	A Regulation for extending the powers of the Magistrates and Joint Magistrates in the trial of persons charged with breaking into houses and other places of habitation, or into warehouses or other places used for the custody of property, with an intent to steal; or charged with theft, or with buying or receiving stolen property, knowing the same to have been stolen, or charged with escape from Jail or other place of confinement,	The whole Regulation.
Regulation III. of 1819, ...	A Regulation for extending the provisions of Section 10, Regulation VIII. 1818, to robbers not being dacoits or gang robbers,	The whole Regulation.
Regulation VII. of 1819, ...	A Regulation for declaring certain misdemeanors punishable by the Magistrates, and for defining the punishment to be adjudged in such cases,	The whole Regulation.

SCHEDULE OF REGULATIONS AND ACTS REPEALED

Reference to Regulation or Act	Title of Regulation or Act.	Extent of Repeal.
Regulation IV. of 1820, ...	A Regulation for declaring the power of the Magistrates to give effect to Military sentences in certain cases; for providing for the more efficient exercise of the control of the Courts of Circuit over the sentences of the Magistrates in certain cases; and for amending Clause 2, Section 3, Regulation XII 1818,	The whole Regulation.
Regulation VII. of 1820, ...	A Regulation for altering the punishment and form of trial in cases of dhurna,	The whole Regulation.
Regulation III. of 1821, ...	A Regulation for extending, in special cases, the powers of Assistants to the Magistrates, for empowering the Hindoo and Mahomedan Law Officers of the Zillah and City Courts and Sudder Ameens to try and determine petty thefts and other Criminal cases of a trivial nature, when referred to them by a Magistrate; for limiting the period of appeal in Foujdaree cases; for rescinding parts of Section 12 and Section 17, Regulation XXII. 1816; for modifying some of the rules in force relative to the rate and collection of the assessment levied for the maintenance of Chowkeedars of Police; and for vesting the Magistrates with certain powers in regard to persons travelling through or assembling within their jurisdictions under suspicious circumstances,	The whole Regulation.
Regulation I. of 1822, ...	A Regulation for amending Regulation XLIX. of 1793, Regulation XXXII. of 1803, and Regulation V. of 1809,	The whole Regulation.
Regulation IV. of 1822, ...	A Regulation to provide for the more effectual administration of Criminal Justice in certain cases,	The whole Regulation.
Regulation VIII. of 1822, ...	A Regulation to declare that persons charged with crimes and misdemeanors must ordinarily be brought to trial at the Foujdaree Court or Sessions of the District in which such crimes or misdemeanors may be perpetrated; and to vest the Governor	The whole Regulation.

	General in Council and the Nizamut Adawlut with a discretionary power as to the place of trial,	
Regulation II. of 1823, ...	A Regulation for the more effectual suppression of affrays,	The whole Regulation.
Regulation IV. of 1823, ...	A Regulation for declaring the intent of Section 14, Regulation VII of 1794, and for prohibiting the Judges of Circuit holding the gaol deliveries, from trying any case in which the prisoner or prisoners may have been committed for trial by themselves in the capacity of Superintendent of Police, Magistrate, Joint Magistrate or Assistant Magistrate, for modifying the third and fourth Clauses of Section 2, Regulation XIV 1811, and for rescinding Sections 4 and 5, Regulation XXIV. 1814, and Sections 2 and 4, Regulation XXV. 1814,	The whole Regulation.
Regulation VI. of 1824, ...	A Regulation for defining the course of proceeding to be pursued by the Magistrates with respect to individuals charged before them with two or more offences in certain cases; for modifying Clause 2, Section 2, and for amending certain other provisions of Regulation XII of 1818,	The whole Regulation.
Regulation X. of 1824, ...	A Regulation for modifying and amending the rules at present in force in regard to the pardon of persons charged with or suspected of Criminal offences,	The whole Regulation.
Regulation I. of 1825 ...	A Regulation for declaring the Judicial Officers competent to superintend the execution of their own process in certain cases; and for extending to Officers entrusted with the execution of a Magistrate's warrant, or other Criminal process, the powers vested in Police Officers by certain provisions in Regulation XX 1817,	The whole Regulation
Regulation IV. of 1825, ...	A Regulation for declaring the Magistrate and Criminal Courts empowered to require recognizances and security for keeping the peace in certain cases; and for explaining some of the provisions contained in Regulation VIII. 1818, relative to security for good behaviour,	The whole Regulation

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation XII. of 1825, ...	A Regulation for defining the powers of the Courts of Circuit and of the Nizamut Adawlut in certain cases; for the uniform punishment of contempts of Court in any of the Courts of Judicature, Civil or Criminal; for exempting females from corporal punishment by stripes; and for discontinuing the corah as an instrument of punishment in all cases,	The whole Regulation.
Regulation XVI. of 1825, ...	A Regulation to make further provision for empowering the Courts of Circuit to pass sentence in certain cases of robbery without reference to the Court of Nizamut Adawlut,	The whole Regulation.
Regulation I. of 1828, ...	A Regulation for empowering the Governor-General in Council to commute sentences of imprisonment for life in the Alipore Jail to transportation for life to any of the British Settlements in Asia in certain cases,	The whole Regulation.
Regulation VI. of 1828, ...	A Regulation to explain the intent and meaning of certain parts of Regulation II. 1823,	The whole Regulation.
Regulation VIII. of 1828, ...	A Regulation for enlarging the powers of the Magistrates with regard to the offence of affrays,	The whole Regulation.
Regulation VI. of 1829, ...	A Regulation for extending the powers of the Magistrates and Joint Magistrates in certain cases of theft,	The whole Regulation.
Regulation VII. of 1829, ...	A Regulation for rescinding such parts of the existing Regulations as prescribe forms for periodical Reports, Calendars, Registers, or other statements to be furnished by the Civil or Criminal Authorities and require the same to be forwarded at periods specified, and declaratory of the power to prescribe the forms of such statements vested in the Courts of Sudder Dewanny and Nizamut Adawalut, by Regulation X. 1796, Section 3, and Regulation XX. 1803, Section 3,	The whole Regulation.
Regulation XII. of 1829, ...	A Regulation for modifying the provisions of Regulation XII. 1825,	The whole Regulation.

Regulation XVII. of 1829, ...	A Regulation for declaring the practice of Suttee, or of burning or burying alive the widows of Hindoos, illegal and punishable by the Criminal Courts,	Sections 4 and 5.
Regulation IV. of 1830, ...	A Regulation to explain the intent and meaning of Clause 4, Section 3, Regulation I. 1829,	The whole Regulation.
Regulation VIII. of 1830, ...	A Regulation for modifying the existing rules relative to the enquiry by Magistrates and Joint Magistrates into charges of a criminal nature,	The whole Regulation.
Regulation VI. of 1831, ...	A Regulation for the appointment of one or more Judges, to be ordinarily stationed at Allahabad, for the purpose of exercising the powers and authority of the Sudder Dewanny and Nizamut Adawlut, within the Province of Benares, the Ceded and Conquered Provinces, including the Districts of Meerut, Saharunpore, Mozuffernuggur, Boolundshuhur, which are now subject to the Chief Commissioner at Delhi, and the powers and authority of the Nizamut Adawlut in the Province of Kumaon and the Saugor and Nerbudda Territories,	Sections 12 and 13.
Regulation VII. of 1831, ...	A Regulation for enabling the Governor-General in Council to afford relief to the Commissioners of Circuit by vesting the Zillah and City Judges, not being Magistrates, with powers to hold monthly Jail deliveries within their respective jurisdictions (whenever that measure may be deemed advisable), and for defining the powers and duties of the Judges or other Officers, not being in charge of the Office of Commissioner, who may be appointed to hold any Jail delivery while so employed,	Sections 5 and 6, and so much of Section 7 as relates to Session Judges.
Regulation IX of 1831, ...	A Regulation for the more speedy and efficient administration of justice in the Courts of Sudder Dewanny and Nizamut Adawlut,	Sections 3 and 4.
Regulation II. of 1832, ...	A Regulation for the better administration of Criminal justice and the Police in certain cases,	Sections 2 and 3.
Regulation III. of 1832, ...	A Regulation for extending the provisions of Regulation X. 1811,	Clause 2 of Section 2.

SCHEDULE OF REGULATIONS AND ACTS REPEALED

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation VI. of 1832, ...	A Regulation for enabling European functionaries to avail themselves of the assistance of respectable natives in the administration of Civil or Criminal justice, and for modifying or dispensing with futwas by Mahomedan Law Officers in certain trials,	Sections 4, 5 and 6.
Regulation II. of 1834, ...	A Regulation for abolishing corporal punishment; for substituting a fine in certain cases for a sentence of labor; and for the gradual introduction of a better system of prison discipline,	The whole Regulation, except Section 7.
	MADRAS.	
Regulation III. of 1802, ...	A Regulation for receiving, trying, and deciding suits or complaints declared cognizable in the Courts of Adawlut established in the several Zillahs immediately subject to the Presidency of Fort St. George,	Section 8.
Regulation IV. of 1802, ...	A Regulation for establishing four Provincial Courts of Appeal, for hearing appeals from decisions passed in the several Zillah Courts; and defining their powers and duties, and prescribing rules for receiving and deciding upon appeals, and other causes of which they are declared to have cognizance,	Section 20.
Regulation VII. of 1802, ...	A Regulation for the establishment of the Courts of Circuit for the trial of persons charged with crimes,	The whole Regulation.
Regulation VIII. of 1802, ...	A Regulation for establishing a Foujdary Adawlut or Chief Criminal Court for the trial of Criminal cases in the last resort,	Sections 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24 & 25.
Regulation XI. of 1802, ...	A Regulation for the appointment of the Hindoo and Mahomedan Law Officers of the Civil and Criminal Courts of Judicature,	Section 8.
Regulation XII. of 1802, ...	A Regulation for the appointment of the Ministerial Officers of the Civil and Criminal Courts of Judicature,	Sections 12, 13, and 14.

Regulation XV. of 1803, ...	A Regulation for determining the punishment to be adjudged by the Criminal Court Judicature in cases wherein a discretion is left by the Mahomedan law, for defining the crime and punishment of robbery by open violence, and for declaring what convicts shall be hereafter liable to transportation, or to banishment, as well as the punishment of such as may return from transportation, or escape from confinement during the period of their sentences,	The whole Regulation.
Regulation I. of 1810, ...	A Regulation for providing against resistance to the processes of the Zillah Criminal Courts, as well as for compelling the appearance of persons charged with acts of a Criminal nature who may abscond or otherwise evade the process issued against them; for extending and explaining the rules contained in Section 23, Regulation VI. 1802, and in Section 23, Regulation VIII. 1802, and for putting a stop to the practice of parties in Civil suits preferring unfounded accusations of perjury against the witnesses in such suits, and unfounded charges of subornation of perjury against the adverse parties in such suits,	The whole Regulation.
Regulation VI. of 1811, ...	A Regulation to provide more effectually for the punishment of perjury, subornation of perjury, and forgery, and to alter the provisions in force for the payment of a fixed reward on the conviction of public offenders,	The whole Regulation.
Regulation VI. of 1816, ...	A Regulation for reducing into one Regulation the rules which have been passed regarding the Office of Native Commissioners, for modifying and extending their powers in the trial and decision of Civil suits, and for authorizing them, under the designation of District Moonsiffs, to discharge certain additional duties,	Section 49.
Regulation IX. of 1816, ...	A Regulation for reducing into one Regulation certain rules which have been passed regarding the Office of the Zillah Magistrate, for modifying and defining his powers, and for transferring the Office of Zillah Magistrate from the Judge to the Collector of the zillah,	The whole Regulation, except Sections 2, 3, 4, 5, and 43, and Nos. 1 and 2 of Appendix.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation X. of 1816, ...	A Regulation for constituting the Judges of the Courts of Adawlut of the several zillahs, Criminal Judges of their respective zillahs, and for defining their powers,	The whole Regulation, except Section 40 and Appendix.
Regulation XI. of 1816, ...	A Regulation for the establishment of a general system of Police throughout the territories subject to the Government of Fort St. George,	The whole Regulation, except Sections 8, 9, 10, 12, 13, 14, & 47.
Regulation III. of 1817, ...	A Regulation for explaining and modifying certain provisions of Regulations IX. X. and XI. 1816,	Section 2.
Regulation I. of 1818, ...	A Regulation to provide for the more effectual administration of Criminal justice in certain cases, and to alter certain provisions of the Regulations in force,	The whole Regulation.
Regulation III. of 1819, ...	A Regulation to provide more effectually for the punishment of extortion, oppression, or other abuse of authority on the part of Native Officers of Police,	The whole Regulation.
Regulation V. of 1819, ...	A Regulation for rescinding such parts of Regulation IX. X. and XI. 1816, as disqualify servants of the Government from attesting confessions,	The whole Regulation.
Regulation IV. of 1821, ...	A Regulation for giving greater efficiency to the system of Police established in the Provinces subordinate to the Presidency of Fort St. George,	The whole Regulation, except Section 6.
Regulation II. of 1822, ...	A Regulation to provide for the more effectual administration of Criminal justice in certain cases, and to alter certain provisions of the Regulations now in force,	The whole Regulation.
Regulation VI. of 1822, ...	A Regulation for extending the powers of the Criminal Judges and of the Courts of Circuit in the trial of persons charged with breaking into houses and other places of habitation, or	The whole Regulation.

	into warehouses or other places used for the custody of property, with an intent to steal, or charged with theft, or with buying or receiving stolen property, knowing the same to have been stolen, or charged with escape from Jail or other place of confinement,	
Regulation I. of 1824, ...	A Regulation for extending to the Criminal Courts the rules prescribed in Section 7, Regulation III. 1802, for procuring the attendance and evidence of witnesses,	The whole Regulation.
Regulation I. of 1825, ...	A Regulation to rescind Regulation I. 1822, and to alter certain other provisions of the Regulation in force, and to provide for the more prompt and effectual administration of Criminal justice in certain cases,	The whole Regulation.
Regulation III. of 1826, ...	A Regulation for the more easy conviction of the crime of perjury in certain cases,	The whole Regulation.
Regulation II. of 1827, ...	A Regulation for constituting the Assistant Judges appointed under Regulation I. 1827, Joint Criminal Judges of the zillahs in which they may be stationed, and for defining the extent to which the powers of Magistrate shall be exercised by subordinate Collectors,	Section 3.
Regulation III. of 1827, ...	A Regulation for empowering the Governor in Council in certain cases to direct that persons charged with crimes or misdemeanors shall be sent for trial or committal to another Court than that within the jurisdiction of which the offences charged were committed,	The whole Regulation.
Regulation VI. of 1827, ...	A Regulation for explaining the provisions of Clause 1, Section 5, Regulation XV. 1803, and Clause 4, Section 3, Regulation VI. 1822; for making further provisions against the offence of counterfeiting the Coin; for declaring Magistrates empowered to take recognizances and security for keeping the peace in certain cases; for enlarging the power granted to Magistrates by Clause 1, Section 3, Regulation II. 1822; for modifying and amending the rules in force relating to the requisition of security for good behaviour; and for subjecting to compulsory labour persons unable to find the security required,	The whole Regulation.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation VIII. of 1827, ...	A Regulation for granting to Native Judges jurisdiction in Criminal cases,	So much of Section 4 as provides for Native Judges being guided by Regulation X. 1816, Sections 5, 7, 8, 10, 11, 12, 13, and Clauses 3 and 4 of Section 14.
Regulation X. of 1827, ...	A Regulation for the gradual introduction of trial by Jury into the Criminal Judicature of the Territories subject to the Presidency of Fort Saint George,	The whole Regulation.
Regulation VIII. of 1828, ...	A Regulation for abolishing the use of the rattan as an instrument of punishment, and for substituting, in lieu thereof, the cat-o'-nine-tails,	The whole Regulation.
Regulation IX. of 1828, ...	A Regulation for rescinding such parts of the existing Regulations as prescribe forms for Periodical Reports, Calendars, Registers, or other Statements to be furnished by the Civil or Criminal Courts, and require the same to be forwarded at periods specified,	The whole Regulation.
Regulation VI. of 1829, ...	A Regulation for modifying the Enactments contained in Section 8, Regulation I. 1825,	The whole Regulation.
Regulation VIII. of 1829, ...	A Regulation for the punishment of the fraudulent appropriation or the unlawful and malicious obliteration or destruction of Judicial Records, and for defining the course of proceeding to be observed in bringing to trial persons charged with perjury or subornation of perjury before certain tribunals,	The whole Regulation.
Regulation II. of 1830, ...	A Regulation for abolishing the use of the corah as an instrument of punishment, and substituting in lieu thereof, the cat-o'-nine-tails,	The whole Regulation.

Regulation II. of 1831, ...	A Regulation for modifying the provisions contained in Regulation VIII. 1827, which require that persons committed for trial before the Court of Circuit by a Native Criminal Judge, shall be sent to the Criminal Judge, or the Joint Criminal Judge of the Zillah, in order to their being tried by the Court of Circuit,	The whole Regulation
Regulation III. of 1831, ...	A Regulation to provide for the more effectual administration of Justice in certain cases,	The whole Regulation
Regulation VIII. of 1831, ...	A Regulation for vesting in single Judges of the Courts of Sudder and Foujdary Adawlut, and in single Judges of the Provincial Courts of Appeal, under certain restrictions, the power now exercised by two or more Judges of those Courts respectively,	Section 5.
Regulation VIII. of 1832, ...	A Regulation for rescinding Clause 2, Section 7 and Section 8, Regulation IV. 1821,	The whole Regulation.
Regulation IX. of 1832, ...	A Regulation for the punishment of false accusations preferred to a Head of District Police, or Police Officer vested with the powers of a Head of District Police,	The whole Regulation.
Regulation XIII. of 1832, ...	A Regulation to provide for the more effectual administration of Criminal justice in certain cases,	The whole Regulation.
Regulation II. of 1833, ...	A Regulation for exempting females from corporal punishment by stripes,	The whole Regulation.
Regulation III. of 1833, ...	A Regulation for conferring upon Sudder Ameens jurisdiction in Criminal cases, and for extending the Civil jurisdiction of Registers, Sudder Ameens, and District Moonsiffs,	Section 2.
Regulation I. of 1834, ...	A Regulation for the punishment of persons convicted of treason or rebellion,	The whole Regulation.
	BOMBAY.	
Regulation II. of 1827, ...	A Regulation for defining the constitution of Courts of Civil Justice and the powers and duties of the Judges and Officers thereof,	Section 36.
Regulation IV. of 1827, ...	A Regulation prescribing the forms of proceeding of the Courts of Law in Civil suits and appeals, and rules for the trial of the same,	Clause 4, Section 34, also Section 52, and Sections 54 and 55.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation XI. of 1827, ...	A Regulation for defining the persons subject to the operation of the Regulations on Criminal Judicature, under what circumstances foreigners may be given up to the Government to which they belong, and under what circumstances Government may exercise a control over the residence and persons of emigrants and their descendants,	The whole Regulation.
Regulation XII. of 1827, ...	A Regulation for the establishment of a system of Police throughout the Zillahs subordinate to Bombay, for providing rules for its administration, and for defining the duties and powers of all Police Authorities and servants,	The whole Regulation, with the following exceptions: Section 1, in as far as it applies to the Zillah Magistrate; Clause I of Section 3, in as far as it relates to the Police functions of the Zillah Magistrate; Clause 2, of Section 3; Clause 5, of the same Section in as far as it extends to the Zillah Magistrate; Section 4, in as far as it extends to Assistant Collectors in charge; Section 6; Clause 4 of Section 10; Clause 1 of Section 13, in as far as it regulates the endorsement and record of warrants issued by Magistrates; Clauses 1, 6, 7, and 8 of Section 19; Section 20; Clause 1 of Section 22, in as far as it relates to the superintendence of Village Police; Clause 2 of Section 27; Section 30,

		Clause 4 of Section 31; Sections 37, and 40; and Chapter IV.
Regulation XIII. of 1827,	A Regulation for defining the constitution of Courts of Criminal Justice, and the functions and proceedings thereof,	Sections 4, 5, 6, 10, 11, 12, and 13; Chapters III. and IV.; Sections 29 and 30; Clauses 1 and 2, Section 31, Clause 3 of Section 33, and the whole of Chapter VI. except Clause 3 of Section 34, in as far as it authorizes the occasional substitution of a letter for a summons, and except Clause 9 of the same Section, Clause 2 of Section 36 and Clauses 1 and 2 of Section 43.
Regulation XIV. of 1827,	A Regulation for defining crimes and offences, and specifying the punishments to be inflicted for the same,	The whole Regulation, except Clause 2 of Section 3, and Sections 20 and 23.
Regulation XV. of 1827,	A Regulation containing rules under which landholders may be invested with Police authority within their respective lands, or other convenient limits, and deprived of the same; and declaring the mode of procedure to be followed in regard to them in Criminal matters,	The whole Regulation.
Regulation XXIII. of 1827,	A Regulation imposing certain restrictions on money transactions between persons filling certain Civil Offices and others, and on the employment of individuals with whom they may have such transactions by the said Officers in official capacities: on the possession of landed property by Europeans and Americans, and on the general use of Uniforms and Badges,	The whole Regulation.
Regulation XXX. of 1827,	A Regulation enacting certain modifications of Regulations XII. XIII. XIV. and XV. of 1827 with reference to the Zillahs of Poona and Ahmednuggur,	The whole Regulation.
Regulation XVII. of 1828,	A Regulation to provide for the punishment of the crime of conspiracy,	The whole Regulation.
Regulation III. of 1830,	A Regulation rescinding Regulations VIII. and XII of 1828, and vesting the Criminal Judges with the powers and functions of Session Judges,	The whole Regulation, except Sections 2, 4, 6, and 7.

SCHEDULE OF REGULATION AND ACTS REPEALED.

Reference to Regulation or Act.	Title of Regulation or Act.	Extent of Repeal.
Regulation IV. of 1830,	A Regulation rescinding such parts of Regulation XII. of 1827, as vest the Criminal Judge with Police Jurisdiction of the Magistrate and his Assistants,	The whole Regulation, except Clause 1 of Section 1, and Section 2
Regulation XVI. of 1830.	A Regulation to rescind that part of Clause 2, Section 26, Regulation XIV. 1827, which exempts persons assisting at rites of self-immolation from the penalty of murder; and declaring the punishments to which persons shall be liable who may assist or use force or violence in the commission of such acts,	The whole Regulation.
Regulation XIX. of 1830,	A Regulation providing for the appointment of a Joint Session Judge within the Zillah of Poona,	The whole Regulation.
Regulation V. of 1831,	A Regulation for making persons effecting an escape from custody, unaccompanied by force, liable to the penalties prescribed in Regulation XIV, 1827, Section 24,	The whole Regulation.
Regulation VIII. of 1831,	A Regulation for modifying the jurisdiction of Session Judges and Judicial Commissioners,	The whole Regulation, except Section 1.
Regulation IX. of 1831,	A Regulation for modifying the rules under which Landholders may be invested with Police jurisdiction,	The whole Regulation.
Regulation III. of 1833,	A Regulation for the more efficient administration of Police in certain large Towns situated in the Zillahs subordinate to Bombay,	The whole Regulation.
Regulation VII. of 1833,	A Regulation for modifying the provisions in force for the trial and punishment of persons exceeding twelve in number assembling for riotous or rebellious purposes, not amounting to treason; and for defining the tribunal before which persons committing offences under the designation of unlawful attempts to alter the established laws, or disturbing the peace of Foreign States, may be tried,	The whole Regulation.
Regulation of VIII. 1833,	A Regulation for modifying Section 9 of Regulation III. 1830, and introducing a more suitable arrangement for the performance of the annual Circuit by the Judicial Commissioners,	The whole Regulation.

ACT No. VI. OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 18th February 1864.)

An Act to authorize the punishment of whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping.; It is enacted as follows :—

Whipping added to the punishments described in Section 53 of the Penal Code.

I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

II. Whoever commits any of the following offences, may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code ; that is to say :—

1. Theft, as defined in Section 378 of the said Code.

2. Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.

3. Theft by a clerk or servant, as defined in Section 381 of the said Code.

4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

5. Extortion by threat, as defined in Section 388 of the said Code.

6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

8. Dishonestly receiving property stolen in the commission of a Dacoity, as defined in Section 412 of the said Code.

9. Lurking house-trespass, or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

10. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

No female shall be punished with whipping. Section 7.

All sentences of whipping are appealable in the manner prescribed in Sections 408, 409, 412 of the Code of Criminal Procedure. If, however, no other punishment has been awarded, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of the sentence already carried out, and not to bring under review the sentence itself with a view to its revision. Calcutta High Court, 314, 1864.

Abetments of the offences mentioned in Section 2 may generally be punished with whipping, as the Indian Penal Code, in providing the punishment for nearly every case of abetment, declares that the punishment for the substantive offence shall be awarded. See Sections 109, 110, 111, 112, 114. Attempts to commit any of these offences are not punishable with whipping.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence be liable under the Indian Penal Code.

On second conviction of any offence mentioned in last Section, whipping may be added to other punishment.

In passing sentences of whipping, the provisions of Section 7 of this Act, should be borne in mind.

The Calcutta High Court has held that a sentence of imprisonment and whipping passed on a person convicted of "theft," and who had been previously convicted of "receiving stolen property" was illegal, as the convictions in both cases should have been for the same offence. Amarut Sheikh. Oct. 28, 1865.

Both convictions must have been under the Indian Penal Code, consequently if the first offence was committed before 1st January 1862, that is, before that Code became Law in the Presidency of Bengal, the offender would not, by reason of a second conviction of that offence, be liable to whipping. Id. 425, 1864.

In connection with Section 3 read Section 9, the effect of which is, to defer the immediate execution of sentences of whipping, when such are passed *in addition to* imprisonment, for, as ruled by the Calcutta High Court (Cir. 2, 1864), all sentences of whipping are appealable in the manner prescribed in Sections 408, 409, 412 of the Code of Criminal Procedure.

As regards the passing of sentences of whipping on persons convicted of abetments of, or attempts to commit, offences punishable with whipping, see note to Section 2.

IV. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code; that is to say:—

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or Dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit Robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing Robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

In passing sentences of whipping, the provisions of Section 7 of this Act should be borne in mind.

See note to Section 3, regarding the application of Section 9 to sentences of whipping passed *in addition to* imprisonment.

See note to Section 2, regarding the passing of sentences of whipping on persons convicted of abetments of or attempt to commit offences punishable with whipping.

Juvenile offenders punishable with whipping for offences not punishable with death.

V. Any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

See note to Section 2, regarding the right to appeal against sentences of whipping.

Following Section 83 of the Indian Penal Code, the Agra Sudder Court have held that "juveniles" are persons under 16 years of age. May 7, Sept. 24, 1864.

A juvenile offender cannot, under Section 5, be punished with whipping *and* imprisonment. Calcutta High Court, Abdool, July 5, 1864.

When offences specified in Section 4 may be punished with whipping in Frontier Districts and wild tracts.

VI. Whenever any local Government shall by notification in the Official Gazette have declared the provisions of this Section to be in force in any Frontier District or any wild tract of country within the jurisdiction of such local Government, any person who shall in such district or tract of country after such notification as aforesaid commit any of the offences specified in Section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

Exemption of females.

VII. No female shall be punished with whipping; nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

Officers inferior to Subordinate Magistrate of the first Class not to pass sentence of whipping, unless expressly empowered by Government.

VIII. No sentence of whipping shall be passed by any Officer inferior to a Subordinate Magistrate of the first class, unless he shall have been expressly empowered by the local Government to pass sentences of whipping.

Whipping if awarded in addition to imprisonment, when to be inflicted.

IX. When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or in case of an appeal immediately on the

receipt of the order of the Court confirming the sentence, if such order shall not be received within the fifteen days.

All sentences of whipping are appealable in the manner prescribed in Sections 408, 409, 412 of the Code of Criminal Procedure (Calcutta High Court, Cir. 2, 1864); but, if the whipping be awarded in lieu of any other punishment, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of a sentence already carried out, and not to bring under review the sentence itself with a view to its revision. Id., 314, 1864.

Mode of inflicting the punishment.

X. In the case of an adult, the punishment of whipping shall be inflicted with such instrument in such mode and on such part of the person as the local Government shall direct, and in the case of a juvenile offender, it shall be inflicted in the way of school discipline with a light rattan. In no case, if the cat of nine tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or if the rattan be employed, shall the punishment exceed thirty stripes. The punishment shall be inflicted in the presence of a Justice of the Peace, or of an Officer authorized to exercise any of the powers of a Magistrate, and also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.

The Lieutenant-Governor of Bengal has directed that, in the case of an adult, the whipping shall be inflicted on the breech with a rattan not more than half an inch in diameter. Government Order No. 1690, dated 15th March, 1864.

Punishment not to be inflicted if offender not in fit state of health.

Nor by instalments.

XI. No sentence of whipping shall be carried into execution, unless a Medical Officer, if present, certifies, or unless it appears to the Justice of the Peace or other Officer present, that the offender is in a fit state of health to undergo the punishment; and if during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Officer present, that the offender is not in a fit state of health to undergo the remainder of the punishment, execution shall be stayed. No sentence of whipping shall be executed by instalments.

The Governor-General of India in Council has notified that he considers that the precaution of having a Medical Officer present at the time of the infliction of the punishment, should be observed in every instance when practicable.

Procedure if punishment cannot be inflicted under the last Section.

XII. In any case in which, under the last preceding Section of this Act, no part of a sentence of whipping is carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion, either order the discharge of the offender, or sentence him in lieu of whipping to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence; provided that the whole period of imprisonment shall not exceed that to which the offender is liable under the provisions of the Indian Penal Code, or that which the said Court is competent to award.

APPENDIX B.

LAWS AND RULES OF PRACTICE RELATING TO TRIALS AND PRELIMINARY ENQUIRIES HELD BY MAGISTRATES AND JUSTICES OF THE PEACE IN CASES IN WHICH THE ACCUSED PERSON MAY BE A EUROPEAN BRITISH SUBJECT.

A European British subject, when charged with the commission of a criminal offence, can be tried only by the High Court of Judicature at Calcutta, Madras, or Bombay, or by the Chief Court in the Punjab (Act VI. of 1866), except in the cases provided for by 53 Geo. III. C. 155, Sec. 105, Act VII. of 1853, or Sections 163 and 165 of the Code of Criminal Procedure over which a Magistrate who is a Justice of the Peace has jurisdiction. See Sections 39 and 42 of the Code of Criminal Procedure.

A European British subject has been defined to be "a person who was born in the United Kingdom of Great Britain or Ireland, or one who is the legitimate offspring of a father or grandfather there born."

Persons not born in wedlock follow the nationality of their mothers, and may be considered British subjects, European foreigners, or Americans, according as their mothers may respectively be British, Foreign European, or American.

Before committing a European British subject for trial by a Court having jurisdiction, the Magistrate and Justice of the Peace holding the preliminary enquiry, should satisfy himself that there is evidence of his being amenable to the jurisdiction of that Court. For this purpose, there should be produced the evidence of a credible person, who knows the accused and his place of birth, or who has heard him declare to what country he belongs. If an accused person plead before a Magistrate that he is a European British subject, and that therefore he is not amenable to the jurisdiction of the local Courts, and the Magistrate has no reason to distrust this statement, it is sufficient for the Magistrate to act on this allegation; and if he considers the evidence to be such as to warrant the commitment of the accused person to the High Court (or Chief Court in the Punjab) he should make such commitment. The Magistrate should, however, forward as a witness some person who heard the accused person make this plea. (Calcutta High Court Circular 5, 1864.) A Magistrate is bound to give an accused person an opportunity of pleading that he is a European British subject. Id. Clark *v.* Beane, March 13, 1866.

The duties of Magistrates in cases in which the accused persons may be European British subjects, and the penalties to which they are liable in consequence of any irregularity in their proceedings, were discussed and made the subjects of judicial decisions in the cases of Calder *v.* Halkett (2 Moore's Indian Appeals, 293), and R. *v.* Foy. (Taylor and Bell's Reports of cases decided by the Supreme Court, Calcutta, p. 219.)

In the first mentioned case, the Judicial Committee of the Privy Council laid down that the defendant, who was a Magistrate in India, had not rendered himself liable to an action for trespass by reason of his having acted without jurisdiction in unlawfully confining a European British subject, *unless "he knew or ought to have known of the defect in his jurisdiction,"* and as it appeared, that there was no evidence on the part of the plaintiff, to show that the defendant knew or ought to have known this fact, the appeal was dismissed.

The following is an extract from the judgment of the late Supreme Court, Calcutta, in the case of R. *v.* Foy. (Taylor and Bell, 219).

"If the Magistrate know that the prisoner is a European British subject, it is his duty, whether the prisoner claims exception or not, to abstain from further proceedings against him as a Magistrate. If without any actual knowledge on the subject, the Magistrate have reason to suppose that the prisoner is such a British subject, it is the Magistrate's duty to ascertain from him, whether he alleges or denies that he is one; and if he alleges that he is, to give him every facility by allowing time, and otherwise, for proving that he is, the burden of such proof being on him. A Magistrate will not be justified, if he has reason to suppose that a prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the Magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof or produce documents which, although not amounting to full legal proof of his status, satisfy the Court that he is really a European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a Justice of the Peace, and send it up to the Supreme Court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent.

"The law is, that if a Judge has no jurisdiction, and has the knowledge or means of knowledge of his want of jurisdiction, he is liable as a trespasser if he acts. (Calder *v.* Halkett and the cases there referred to). The duty of a Court is to walk in the course prescribed for it, as it understands its limits, and not to assume a jurisdiction which has not been confided to it. If a Court have reasonable ground to doubt its jurisdiction, it should take care to clear up the point, and to allow time for the production of the proper evidence. It is undoubtedly true that if a Court of limited jurisdiction exceeds its jurisdiction by reason of the existence of a personal exemption, or other cause not communicated, not known to the Judge, or of which he has not to the means of knowledge in his reach, the Judge and his Officers cannot be treated as trespassers. The case of the Marshalsea Court (cited in Mr. Baron Powell's judgment) shows that it is otherwise, where the means of knowledge are in the power of the Judge. It is therefore an unsafe doctrine to hold out to a Judge, that he may disregard an apparently *bonâ fide* claim of personal exemption from his jurisdiction, which he knows, or has good reason to believe, is well founded, on the ground of the absence of legal proof of the fact of exemption; for in many cases no doubt can exist of the truth of facts which a party, incapacitated from giving evidence for himself, is under a temporary inability to prove, and the question would be whether the Judge really believed that he had the jurisdiction which he exercised. The question would not turn on this, viz on whom the *onus* of proof of the exemption would lie, if put in issue; but on the *bona fides* of the proceeding upon the claim of the exemption. The question before us, however, is unaffected by such consideration, for if there be error in the proceeding, it is not the less a proceeding of a Court of competent jurisdiction. It is not alleged that the Court knew that it wanted jurisdiction. That question might be tried in its appropriate mode of proceeding, either by criminal or civil procedures. If a Judge discovers at any stage of the proceedings, that he has really no jurisdiction over the subject matter or the person, he would be utterly inexcusable, if he proceeded further and did not do his utmost to remedy what had been unwittingly done in the belief of jurisdiction. The immunity from suit for judicial acts is in respect of the character of Judge, which if a man assumes, knowing that in fact he is not so, either as to the subject matter or the man, he neither merits nor has any immunity."

The following footnote in Taylor and Bell's Reports is deserving of attentive consideration:—

"Since the above decision, the Bengal Government has passed the following Act, No. XVIII. of 1850.

For the greater protection of Magistrates and others, acting judicially: It is enacted as follows:—

'No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction; provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of; and no Officer of any Court or other person bound to execute the lawful warrant or order of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person executing the same.'

"The construction of this Act, for the first time since its promulgation, was submitted to the opinion of the Judges of the Supreme Court (August, 1851) in the case of Lang *v.* Gubbins, which was an action brought against a Mofussil Magistrate for issuing an illegal warrant to seize the plaintiff's goods and chattels.

"In that case, Peel, *C. J.* in delivering the judgment of the Court, (after argument of the question) held, that the words "in good faith" were merely an English version of the common Latin phrase "*bonâ fide*" of such frequent use in the law, both phrases having the same meaning; that the true construction of "good faith" appeared to be "that belief which, though erroneous, was excusable in the particular instance, or in other words, that which stood on some reasonable grounds," and that this Act in fact protected excusable errors only, and could not be extended to errors which deserved no protection."

53, GEO. III., C. 155, SECTION 105.

Section 42 of the Code of Criminal Procedure declares that the jurisdiction given by this statute shall be exercised *only by a Justice of the Peace.*

Justices of Peace in the provinces shall have jurisdiction in case of assault and trespass committed by British subjects on the Natives of India.

CV. And whereas His Majesty's British subjects resident in the British territories in India, without the towns of Calcutta, Madras, and the town and island of Bombay, are now, by law, subject only to the jurisdiction of His Majesty's Courts at Calcutta, Madras, and Bombay respectively, and are exempted from the jurisdiction of the Courts established by the said United Company within the said territories, to which all other persons, whether Natives or others, inhabitants in the said territories without the limits of the towns aforesaid, are amenable: and whereas it is expedient to provide more effectual redress for the Native inhabitants of the said territories, as well in the case of assault, forcible entry, or other injury accompanied with force, which may be committed by British subjects at a distance from the places where His Majesty's Courts are established, as in case of civil controversies with such British subjects; be it therefore enacted, that it shall and may be lawful for any native of India, resident in the East Indies, or parts aforesaid, and without the said towns, in case of any assault, forcible entry, or other injury accompanied with force, alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry or other injury accompanied with force, not being felony, to the Magistrate of the zillah or district where the alleged offender shall be resident, or in which such offence shall have been committed; and that such Magistrate shall have power and authority, at the instance of the person so complaining, to take cognizance of such complaint, to hear parties, to examine witnesses, and, having taken in writing the substance of

the complaint, defence, and evidence, to acquit or convict the person accused; and, in case of conviction, to inflict upon such person a suitable punishment, by fine, not exceeding five hundred rupees, to be levied in case of non-payment by warrant under the hand of the said Magistrate, and upon any property of the party so convicted, which may be found within the said district; and if no such property shall be found within the said district, then it shall be lawful for the said Magistrate, by warrant also under his hand, to commit such offender to some place of confinement within the said zillah or district, which in the judgment of the said Magistrate shall be fit for receiving such offender; or if there shall be no fit place of confinement, then to the goal of the presidency, to remain there for a period not exceeding two months, unless such fine shall be sooner paid; and it shall be lawful for the said Magistrate to award the whole or any portion of such fine to the party aggrieved, by way of satisfaction for such injury.

Copy of conviction and proceedings to be sent to the Government.

Provided always, that in all cases of conviction of a British subject, under the provision hereinbefore contained, the Magistrate before whom such conviction shall take place shall forthwith transmit copies of such conviction, and of all depositions and other proceedings relative thereto, to the Government to which the place wherein the offence was committed is or shall be subordinate.*

Fines to be paid to the Magistrate.

Provided also, that all such fines shall be paid in the first instance to the Magistrate before whom the party offending shall be convicted, and the amount thereof, after making such satisfaction to the party aggrieved as aforesaid, if any, shall be transmitted by such Magistrate to the Clerk of the Crown, or other officer to whom it belongs to receive fines in His Majesty's Court of Oyer and Terminer and Gaol Delivery for the province within which the offence shall have been committed; and such fines shall and may be disposed of in the same manner as other fines imposed by such Court of Oyer and Terminer and Gaol Delivery.

Application thereof.

Convictions removable by certiorari and subject to provisions of 33 Geo. 3, C. 52

Provided also; that all such convictions shall and may be removable by writ of certiorari into the said Courts of Oyer and Terminer and Gaol Delivery respectively, in the same manner, and upon the same terms and conditions, and shall be proceeded upon in the same manner in every respect as is directed in the said Act of the thirty-third year of His Majesty's reign, with regard to other convictions before Justices of Peace in the British settlements or territories in India; provided also, that nothing herein contained shall extend, or be construed to extend, to prevent such Magistrate from committing or holding to bail any British subject charged with any such offence before him, in the same manner as such British subject might have been committed or holden to bail if this Act had not been passed, where the offence charged shall appear to such Magistrate to be of so aggravated a nature as to be a fit subject for prosecution in any of His Majesty's Courts to which such British subject may be amenable.

Section 410 of the Code of Criminal Procedure declares that "any person convicted and sentenced by any Justice of the Peace exercising jurisdiction under the Statute 53 George III, c. 155, s. 105, or under Act VII. of 1853 (*to extend the jurisdiction of Magistrates under the 53 George III, c. 155, s. 105, in cases of assault, forcible entries, and other injuries accompanied with force, not being felonies*), or under Section 163 or 165 of this Act, may appeal to the Court of Session having jurisdiction at the place at which the appeal would have been heard, had the sentence been passed by a Magis-

* The part printed in Italics has been repealed by Act XXII. of 1854.

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trate subordinate to such Court. Cases appealed under this Section shall not be afterwards liable to revision by means of a writ of *certiorari*. Provided that nothing in this Section shall be held to take away the power of quashing any conviction by means of a writ of *certiorari* in any other case than when there has been such an appeal as aforesaid.

ACT No. VII. OF 1853.

(PASSED ON THE 15TH APRIL, 1853.)

An Act to extend the jurisdiction of Magistrates, under the 53rd George 3rd, Cap. 155, Sec. 105, in cases of assaults, forcible entries, and other injuries accompanied with force, not being felonies.

Whereas, by an Act passed in the 53rd year of the reign of King George the 3rd, it was enacted amongst other things that it should be lawful for any native of India resident in the East Indies or parts therein mentioned, and out of the Towns of Calcutta, Madras, and Bombay, in case of any assault, forcible entry, or other injury accompanied with force, not being felony, alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry, or other injury accompanied with force, not being felony, to the Magistrate of the Zillah or district where the alleged offender should be resident, or in which such offence shall have been committed, and that such Magistrate should have the power and authority therein mentioned: and whereas Natives of India resident in the East Indies, upon complaints preferred by them under the aforesaid provisions of the said Act, may be prevented from obtaining redress under the same, by reason of their inability to prove the place of their birth; and whereas it is expedient to extend the aforesaid provisions of the said Act as amended by Act IV. 1843* to cases of assault, forcible entries, and other injuries accompanied with force, not being felonies, committed in any part of the territories under the Government of the East India Company, not being within the said towns of Calcutta or Madras, or the Islands of Bombay and Colaba, or the settlement of Prince of Wales' Island, Singapore and Malacca, against the person or property of any person whatever, whether a Native of India or not: It is enacted as follows:

I. The provisions of the said Act of the 53rd George 3rd and of Act IV. 1843* so far as the said provisions extend to cases of assault, forcible entries, or other injuries accompanied with force, not being felonies, against the person or property of any Native of India, are hereby extended to the case of any assault, forcible entry, or other injury accompanied with force, not being felony, which may at any time hereafter be committed in any part of the

* Act IV. of 1843 has been repealed by Act XVII. of 1862, and re-enacted by Section 410 of the Code of Criminal Procedure, which declares that "any person convicted or sentenced by any Justice of the Peace exercising jurisdiction under the Statute 53 George III. c. 155, s. 105, or under Act VII. of 1853 (*to extend the jurisdiction of Magistrates under the 53 George III, c. 155, s. 105, in cases of assault, forcible entries, and other injuries accompanied with force, not being felonies*), or under Section 163 or 165 of this Act, may appeal to the Court of Session having jurisdiction at the place at which the appeal would have been heard, had the sentence been passed by a Magistrate subordinate to such Court. Cases appealed under this Section shall not be afterwards liable to revision by means of a writ of *certiorari*. Provided that nothing in this Section shall be held to take away the power of quashing any conviction by means of a writ of *certiorari* in any other case than when there has been such an appeal as aforesaid."

territories under the Government of the East India Company, not being within the said towns of Calcutta or Madras, the said islands of Bombay and Colaba, or the said settlement of Prince of Wales' Island, Singapore and Malacca, by any British subject or other person against the person or property of any person whatever.

II. The powers in such cases given to the Magistrate of the Zillah or District, may be lawfully exercised by any Joint Magistrate or other person lawfully exercising the power of a Magistrate, in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends.

This Section has been modified by Section 42 of the Code of Criminal Procedure, which declares that the jurisdiction given by Act VII. of 1853 shall be exercised *only by a Magistrate who is a Justice of the Peace.*

The following opinion has been delivered by the Advocate-General, Bengal, regarding the Procedure to be observed by a Magistrate and Justice of the Peace in levying a fine imposed upon a European British Subject.

Fine how to be levied.

Under these provisions, (*i. e.* under 53 Geo. 3, C. 155, S. 105 and Act VII. of 1853.) the power to imprison is only given in default of "property within the district" in which the fine could be levied; so that unless it be at the time of conviction proved before the Magistrate, or confessed by the party fined, that he has no property within the district, an attempt to levy by warrant must be made before the Magistrate can commit the offender. After conviction and demand of the fine, the Magistrate may, in default of payment, immediately issue his warrant to levy the fine; and default would be incurred, if the offender, after demand made of payment, were to quit the Court without making payment. But the Magistrate has no authority, after conviction passed, to detain the defendant, or require bail for his appearance, till it be ascertained whether there be property within the district on which the fine can be levied. He can only take bail under Section 105 in such cases as are therein specified. If, however, it be at the time of conviction proved before the Magistrate, or confessed by the offender, that he has no property within the district, the Magistrate (after recording the proof or confession last mentioned) may at once commit for the fine. The offender is not bound upon conviction to disclose his property, or to declare whether he has property or not. If he be known to have property, or if it be doubtful whether he have any within the district, the Magistrate should issue his warrant to levy, and deliver it to his officers for execution in the usual manner. The offender may rebut the proof tendered of his having no property, and give evidence of his having property, to prevent immediate commitment as above, and the Magistrate is bound to receive such evidence if tendered; and he should call upon the offender to say whether he has anything to offer in contradiction of the evidence of no property. If a warrant to levy the fine be issued, it is indispensable that notice of the seizure and intended sale be given by public advertisement; and, if practicable, by service on the offender himself; and the shortest notice that should be given is such as is requisite in cases of distress for rent* or the like. As to the meaning of the term property, it seems that the warrant of the Magistrate for levying, in default of sufficient personal property, may be executed

i. e. five days.

on the real property if any of the offender. But it should be in all cases executed in the first instance on the personalty, because as the statute makes no provision for the transfer of realty to the purchaser, difficulties might arise as to his title, especially if he sue for possession in Her Majesty's Court. Only the right, title, and interest (or property) of the offender can be sold. The Magistrate, or his officer, may deliver over personal property seized and sold under the warrant to the purchaser; but has no authority to dispossess the party in possession of realty, or to deliver possession of it to the purchaser. He must leave him to recover possession by process of law. It may be that the offender has not the right of possession, but only the right of property. The Magistrate should deliver to the purchaser the certificate or other document usually delivered in the Mofussil to purchasers under judicial execution, and there end his duty. If the executing officer has sold (as he ought) merely the right, title, and interest of the offender, the purchaser has no remedy against the Magistrate should that right, &c. prove to be moonshine. The risk of what property may be in the offender, lies with the purchaser. Of course no assurance of title or interest should be held out to the purchaser at the time of sale; and in such case the Magistrate can have no right to retain the purchase money until the title be ascertained. *Opinion of Advocate General in C. O. No.* 79 *of Vol.* 4, *Calcutta Sudder Court's Circular, dated* 25*th February*, 1852; *and opinion of the Officiating Advocate General, dated* 7*th January*, 1852.

The following [11 and 12 Vic. C. 42, S. 18,] is the procedure to be observed in the examination of European British subjects when charged before a Mofussil Magistrate with the commission of a criminal offence. It is to this law that reference was probably made in the judgment of the Calcutta High Court in the case quoted in the note to Sec. 201 of the Code of Criminal Procedure:—

11 AND 12 VIC., C. 42, S. 18.

"After the examination of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the Justice of the Peace or one of the Justices by or before whom such examination shall have been so completed as aforesaid, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and shall say to him these words, or words to the like effect: 'Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything, unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence against you upon your trial;' and whatever the prisoner shall then say in answer thereto, shall be taken down in writing and read over to him, and shall be signed by the said Justice or Justices and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards upon the trial of the said accused person, the same may, if necessary, be given in evidence against him without further proof thereof, unless it shall be proved that the Justice or Justices purporting to sign the same, did not in fact sign the same: provided always that the said Justice or Justices before whom such accused person shall make any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out

to him to induce him to make any admission on confession of his guilt, and that whatever he shall then say, may be given in evidence against him upon his trial, notwithstanding such promise or threat."

In connection with sections 41 and 226 of the Code of Criminal Procedure, it is well to note the following provisions of Statute 9 Geo. IV. c. 74, Ss. 2, 3, 4.

Where any person is taken on a charge of felony or suspicion of felony before a Justice of the Peace at any place beyond the local limits of the Jurisdiction of any of Her Majesty's Courts of Justice erected or to be erected within the British territory, and the charge is supported by positive and credible evidence of the fact, or by such evidence as, if not explained or contradicted, raises in the opinion of the Justice a strong presumption of the guilt of the person charged, such person is to be committed to prison by such Justice in the manner hereinafter mentioned; but if the evidence in support of the charge is not in the opinion of the Justice such as to raise a strong presumption of the guilt of the person charged, and to require his or her committal, or such evidence is adduced on behalf of the person charged, as in his opinion weakens the presumption of his or her guilt, but there notwithstanding appears to him, in either of such cases, to be sufficient ground for judicial enquiry into his or her guilt, the person charged is to be admitted to bail by such Justice in the manner hereinafter mentioned: provided always that nothing herein contained is to be construed to require any such Justice to hear evidence on behalf of any person so charged as aforesaid, unless it appears to him to be meet and conducive to the ends of justice to hear the same. *Section* 2.

The Justice of Peace, before he admits to bail or commits to prison any person arrested for felony or on suspicion of felony, is to take the examination of such person, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same or as much thereof as is material into writing, and the Justice is to certify such bailment in writing, and every such Justice has authority to bind by recognizance all such persons as know or declare anything material touching any such felony or suspicion of felony to appear at the next Court of oyer and terminer, or Jail delivery, or superior Criminal Court, or Session of the Peace at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused, and such Justice is to subscribe all such examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered, to the proper officer of the Court, in which the trial is to be before, or ot the opening of the Court. *Section* 3.

Every Justice of the Peace before whom any person is taken on a charge of misdemeanor or suspicion thereof, is to take the examination of the person charged, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same, or as much thereof as is material, into writing, before he commits to prison or requires bail from the person so charged, and in every case of bailment, is to certify the bailment in writing, and has authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of felony; and is to subscribe all examinations, information, bailments and recognizances, and to deliver or cause the same to be delivered to the proper officer of the Court, in which the trial is to be before, or at the opening of the Court in like manner as in case of felony. *Section* 4.

As regards the amenability of British Officers and Soldiers to Magistrates under the 53rd George III. Chapter 155, with reference to the provisions of the 4th George IV. Chapter 81 and Regulation XX. 1825, the following opinion was given by the Advocate General of Bengal.

The statute 4th George IV. Chapter 81, although it repealed the next or 106th section of the statute 53 George III. Chapter 155, leaves the 105th section unrepealed; and Regulation XX. 1825, which was enacted by a subordinate legislature, and in my opinion solely with a view of carrying out the provision of statute 4th George IV. Chapter 81, cannot in any way affect the operation of the statute 53 George III. Chapter 155. The statute 4 George IV Chapter 81 has been amended and re-enacted by successive enactments, 3 and 4 Vic. Chapter 37, and 12 and 13 Vic. Chap. 43, and since than by 20 and 21 Vic. Chap. 66. Under the latter Acts, the same powers as were formerly conferred upon Courts Martial, distant more than 120 miles from the Presidency, have been continued; but they both contain an express provision that nothing in those Acts contained shall be construed to exempt any officer or soldier from being proceeded against by the ordinary course of law, a provision which leaves the jurisdiction of the Magistrates under statute 53 George III. Chapter 155, and Act V. 1848, and that of the Supreme Courts wholly untouched. With respect to offences committed by British Officers and Soldiers, and not falling within the terms of statute 53 George III. or Act V. 1848, I am of opinion that they are only cognizable by the Supreme Court,* or Courts martial, both of which Courts appear to me to have concurrent jurisdiction over British Officers resident beyond 120 miles from the Presidency.

CIRCULAR No. 5, 1864, ISSUED BY THE CALCUTTA HIGH COURT.

It has been represented to the Court that Magistrates and Justices of the Peace, after making commitments to the High Court in its original criminal jurisdiction, do not promptly send the records of cases to the Clerk of the Crown, but frequently delay doing so until the commencement of the Sessions at which the cases are to be tried. Such a practice causes great inconvenience to all concerned, and deprives the Judge generally of the opportunity which he ought to have for looking over the depositions of the witnesses before *the Grand Jury is charged and*† the case goes to trial. This Court is not aware of any reason for this delay is sending the record to the Clerk of the Crown, and, after this Circular, will not fail to notice with its displeasure any such delay on the part of any Magistrate or Justice of the Peace. The Court takes this opportunity of reminding Magistrates and Justices of the Peace that a copy of the warrant of commitment should always form part of the record which is sent to the Clerk of the Crown.

2. The Court also requests the particular attention of Magistrates and Justices of the Peace to Rule 3 of the Rules‡ circulated for their guidance by Circular 85 of the Secretary to the Government of Bengal, dated the 27th July 1860, which requires that all witnesses should be bound, in the usual form, to attend at the Court House on a day specified, which should be the *first day of the Sessions* for which the prisoner is committed, and which should be the next following Sessions after the commitment, if there is a sufficient interval of time between the commitment and the next Sessions, and if not, then to the next following Sessions.

* i. e. by a High Court in its extraordinary original criminal jurisdiction.

† The words in italics are obsolete as the Grand Jury has since been abolished by Act XIII. of 1865. ‡ These rules follow this Circular.

3. In order to ensure uniformity, the depositions of witnesses should be invariably recorded on foolscap paper and in a legible handwriting, the lines not being too closely written.

4. The following heading should commence each deposition :—

The deposition of taken, under the solemn affirmation prescribed by Act V. of 1841, before me Justice of the Peace, this day of

5. To save unnecessary labor, the Court thinks that it would be well if officers requiring such forms applied in the proper quarter for a supply of printed headings of this description.

6. The depositions should invariably be subscribed with the Memorandum required by Section 199 of the Code of Criminal Procedure, the facts always being, as by law required, in accordance with the Memorandum.

7. As a rule, cases in which *primâ facie* it may appear that a person is charged with an offence for which he can be tried only by the High Court in its original jurisdiction, should be enquired into by Magisterial officers who are competent to commit the accused; but if it happens, as sometimes it may, that a charge is entertained, in the first instance, by an officer who finds that he has no jurisdiction to proceed, and is therefore compelled to stay further proceedings, and refer the case to a competent officer, in such cases the evidence should be taken afresh by such competent officer, and as the proceedings held by the first officer do not constitute the legal basis of any subsequent commitment, they should not form part of the record submitted to the High Court, and should not be transmitted as part of the record to the Clerk of the Crown.

8. The Clerk of the Crown states that not unfrequently Justices apply to him for advice and direction on various points, as, for example, respecting the course of the investigation, the sufficiency of the evidence, the number of the witnesses to be sent down, the selecting of some, and other similar matters of detail. The Clerk of the Crown represents that generally he refers such applications to the Solicitor to Government for reply, that officer being able to obtain the opinion of the Law officers of the Government. The Court is of opinion that it would be better, in such cases where Justices require advice or direction (except as to what merely concerned the office of Clerk of the Crown), that they should apply direct to the Solicitor to Government. The Clerk of the Crown has suggested that, at the examination of the prisoner, the officer in whose charge the prisoner, if committed, will be sent down, should be present, in order that he may be able to prove the examination and signature of the prisoner to it, as in some cases this proof is required to establish the fact of British origin, on which the jurisdiction to commit and try depends. Much inconvenience is often occasioned by witnesses from the Mofussil, through their want of information as to the means of getting quarters, if they are poor and strangers, and as to the means of obtaining their expenses. They should be informed that the Commissioner of the Police of Calcutta has charge of these matters, and not the Clerk of the Crown.

The following rules for the observance of Mofussil Magistrates in cases of British subjects, committed by them for trial by the Supreme (now High) Court, Calcutta, received the sanction of the Government of Bengal and were published on the 27th July, 1860.

1. European prisoners, when committed, must be sent with their warrants of commitment to the Great Jail of Calcutta to the custody of the

Sheriff, and a letter should be sent to the Commissioner of Police in Calcutta, giving the names and crime of the prisoner, as also the date and mode of forwarding him to Calcutta.

2. The depositions taken in the case must be sent at the same time to the Clerk of the Crown, and the exhibits, such as swords, bludgeons, or stolen property, in charge of the Police officers who can testify to them.

3. All witnesses must be bound down in recognizances to attend at the Supreme (High) Court in Calcutta at noon on the first day of the first Sessions.

4. The Magistrate should intimate to the Commissioner of Police by letter the names of the witnesses and direct them all, European and native, immediately on their arrival in Calcutta to leave their names and addresses at the Calcutta Police Office, where they will receive any information or assistance they may require.

5. The witnesses, on the conclusion of the trial, will receive their travelling expences, on application to the Commissioner of Police.

6. Magistrates should be careful that while they send down those witnesses who may be necessary for a proper investigation of the case, none others should be compelled to leave their homes. The evidence of native witnesses to Soorut-hâls and such documents are never taken in the Supreme (High) Court. For instance, if the Civil Surgeon has examined the body of the murdered or wounded man, his evidence will be sufficient, without that of the natives who saw the wounds in the Darôgah's Mofussil investigation. The presence of obviously unnecessary witnesses invariably calls down the animadversions of the Judge of the Supreme (High) Court.

The following forms were prepared by the Solicitor to Government, and were circulated for use among the Magistrates in Bengal by the Superintendent of Police in 1844.

To the keeper of the House of Correction (or other place of confinement.)

Warrant of imprisonment.

Receive into your custody the body of J. S. herewith sent you, he, the said J. S. being convicted before me W. C. B. Esq., one of Her Majesty's Justices of the Peace and Magistrate of Burdwan, upon the oaths (or solemn affirmation) of two credible witnesses, with having on the ——— day of ———, in the year of our Lord one thousand eight hundred and ——— (here state the offence,) and him the said J. S. safely imprison (or, safely imprison and keep to hard labor) for the space of ———, unless the said sums shall be sooner paid; when you will bring him again before me in order that he may be discharged by due course of law.

Given under my hand and seal, this ——— day of ———. 18——.

To the Constable of the ——— in the zillah of ——— and to the keeper of Her Majesty's ——— at Calcutta.

Another form of warrant of imprisonment.

Whereas ——— of ——— (profession) ——— was convicted by and before me the undersigned ——— Magistrate of the zillah of ———, for that the said ——— did on the ——— day of ——— in the present year in the zillah aforesaid ——— and was adjudged by me, the said Magistrate, to be imprisoned for the space of ———. These are therefore to

require you the said Constable to take and forthwith convey the said ——— to the said ——— at Calcutta, and deliver ——— to the said keeper thereof together with this precept: And you, the said keeper, are hereby commanded to receive the said ——— into your custody in the said ——— there to be imprisoned for the space of ——— and for your so doing, this shall be your sufficient warrant. Given under my hand and seal the ——— day of ——— in the year of our Lord one thousand eight hundred and ———.

Magistrate and Justice of the Peace.

To ———

Writ for distress of goods of European British subject to recover fine under 53rd George III.

Whereas ———, a British subject of Her Majesty, at present residing in ———, was, in pursuance of an Act of Parliament passed in the fifty-third year of His Majesty king George the third, entitled an Act, &c. this ——— day of ——— in the year of our Lord 186–, duly convicted before me ———, Magistrate of the zillah ——— of having ———, and was adjudged by me, the Magistrate aforesaid, to pay ———; and whereas the said ——— having notice of my said order ——— these are therefore to command you to levy the said sum of ——— by distress and sale of the goods and chattels of the said ———; and I do hereby order and direct that the goods and chattels so to be distrained be sold, and disposed of within ——— days ——— unless the said sum of ——— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: and you are hereby commanded to certify to me what you shall do by virtue of this my warrant.

Given under my hand and seal at ——— this ——— day of ——— 186–.

Magistrate and Justice of the Peace.

To ———

Warrant for arrest of European British subject on failure to levy fine by distress.

Whereas ———, a British subject of Her Majesty, at present residing in ———, was, in pursuance of an Act of Parliament passed in the fifty-third year of His Majesty king George the third, entitled an Act, &c. and Act VII. of 1853, this ——— day of ——— in the year of our Lord 18—, duly convicted before me ——— Magistrate of the zillah of ———, of having ———; and was adjudged by me, the Magistrate aforesaid, to pay ———; and whereas the said ——— having notice of my said order, has ———; and whereas it appears to me by the return of ——— of the zillah of ——— dated the ——— day of ——— that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said ———, whereof the said sum of ——— may be levied pursuant to my warrant duly made and issued for the levying the said sum of ——— by distress and sale of the goods and chattels of the said ——— these are therefore to command you, the said ——— of the zillah of ——— to convey the said ——— to the Jail aforesaid: And these are also to command you, the keeper of the said Jail, to receive ——— the said ——— into the said Jail, and there to keep without bail or mainprize for the space of ——— unless the said sum of ——— so ordered to be paid as aforesaid shall be sooner satisfied.

Given under my hand and seal this ——— day of ——— 18—.

Magistrate and Justice of the Peace.

ACT No. XVIII. OF 1862.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 1st May, 1862.)

An Act to repeal Act XVI. of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature.*

Preamble.

Whereas, in consequence of the passing of the Indian Penal Code, many of the provisions of Act XVI. of 1852 *(for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company)* have become inapplicable and others require amendment, and it is expedient to repeal the said Act and, pending the preparation of a Code of Criminal Procedure for Her Majesty's Supreme* Courts of Judicature, to re-enact some of the provisions of the said Act, and to make further provision for the administration of Criminal Justice in such Courts; It is enacted as follows:—

Court may amend certain variances not material to the merits of the case and by which the defendant cannot be prejudiced in his defence, and may either proceed with or postpone the trial to be had before the same or another Jury.

I. Whenever, on the trial of an indictment for an offence, there shall appear to be a variance between any statement in such indictment and the evidence offered in proof thereof, it shall be lawful for the Court before which the trial shall be had, if it shall consider that by the amendment of the indictment the person indicted will not be prejudiced in his defence on the merits, to order such indictment to be amended according to the proof, by some Officer of the Court or other person, both in that part of the indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial if the person indicted apply for a postponement, and ordering the same to be had before the same or another Jury, as such Court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences both with respect to the liability of witnesses to be indicted for giving false evidence and otherwise, as if no such variance had occurred. Provided that in any such case, where the trial shall be so postponed as aforesaid, it shall be lawful for such Court to respite the recognizances of the prosecutor and witnesses, and of the person indicted and his surety or sureties (if any), in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the person indicted shall be bound to attend to be tried at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in such and the same manner as if they were originally bound by their recognizances to appear and prosecute, or give evidence at the time and place to which such trial shall be so postponed. Provided also that, where any such trial shall be ordered to be had before another Jury, the Crown and the person indicted shall respectively be entitled to the same challenges as they were respectively entitled to before the first Jury was sworn.

Act XIII. of 1865, Section 7, enacts that, "in Act XVIII. of 1862 the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the

* Now High Courts in Presidency Towns.

said Act shall apply to charges recorded as aforesaid (*i. e.* as in Sections 3, 4, Act XIII. of 1865) and the trial of such charges." By Section 4 of that Act, the Clerk of the Crown (if he consider it necessary or expedient so to do) is empowered to amend, alter or add to the charge upon which a person may have been committed or held to bail for trial before a High Court. If a charge appear to the Judge of the High Court who would in ordinary course try the same, to be clearly unsustainable, an entry to that effect may be made on the charge by such Judge and shall have the effect of a *nolle prosequi*. See Section 8.

On trial for criminal breach of trust and other offences, if the offence be theft, the Court may order indictment to be amended.

II. If upon the trial of any person charged with the offence of criminal breach of trust under Section 405 of the Indian Penal Code, or the offence of cheating and thereby dishonestly inducing the person deceived to deliver property under Section 420 of the said Code, or of criminal breach of trust as a carrier, wharfinger, or warehouse keeper under Section 407 of the said Code, evidence shall be given to prove that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

Similar power of amendment in cases of criminal breach of trust as a clerk or servant.

III. If, upon the trial of any person charged with the offence of criminal breach of trust as a clerk or servant under Section 408 of the Indian Penal Code, evidence shall be given to prove that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, or the offence of theft as a clerk or servant of property in possession of his master under Section 381 of the said Code, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

Similar power of amendment in cases of theft or of theft in a building, tent, or vessel

IV. If upon the trial of any person charged with the offence of theft under Section 378 of the Indian Penal Code, or the offence of theft in a building, tent, or vessel under Section 380 of the said Code, evidence shall be given to prove that, in respect of the property stated in the indictment,* such person was guilty of the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of criminal breach of trust under Section 405 of the said Code, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

Similar power of amendment in cases of theft as a clerk or servant.

V. If, upon the trial of any person charged with the offence of theft as a clerk or servant of property in the possession of his master under Section 381 of the Indian Penal Code, evidence shall be given to prove that such person was guilty of the offence of dishonest misappropriation of property under Section 403 of the said Code, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of such dishonest misappropriation under the said Section 404, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under Section 405 of the said Code, or the offence of criminal breach of trust as a clerk or servant under Section 408 of the said Code, in respect of the property stated in the indictment, the Court may order the indictment* to be amended under the provisions of Section 1 of this Act.

* By Act XIII. of 1865, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* in Sections 3 and 4) "and the trial of such charges."

Verdicts and judgments valid after amendments.

VI. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Act, shall be of the same force and effect in all respects as if the indictment* had originally been in the form in which it is after such amendment shall have been made.

Records to be drawn up in amended form, without noticing the amendments.

VII. If it shall become necessary at any time, for any purpose whatsoever, to draw up a formal record in any case where any amendment shall have been made under the provisions of this Act, such record shall be drawn up in the form in which the indictment* is after such amendment shall have been made, without taking any notice of the fact of such amendment having been made.

Form of indictment in cases of theft.

VIII. In an indictment* for theft the person indicted may be charged with having dishonestly taken the property stated in the indictment* out of the possession of the person mentioned therein without that person's consent, and in support of such allegation it shall be sufficient to prove that the person indicted, intending to take dishonestly such property out of the possession of the person mentioned in the indictment,* without that person's consent moved that property in order to such taking.

The means by which the injury was inflicted, need not be specified in indictments for murder and culpable homicide.

IX. In an indictment* for murder or culpable homicide not amounting to murder, or for abetting murder or culpable homicide not amounting to murder, or for attempting to commit murder, which shall be preferred after this Act shall come into operation, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused or attempted to be caused.

Form of indictment in cases of murder.

X. In an indictment* for murder it shall be sufficient to state that the person charged with the offence did murder the deceased by doing an act with the intention of causing the death of a human being, or, as the case may be, by doing an act with the intention of causing such bodily injury to the deceased as the offender knew to be likely to cause the death of the deceased, or by doing an act with the intention of causing bodily injury to some person, and that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death, or by doing an act knowing it to be so imminently dangerous that it must in all probability cause the death of a human being or such bodily injury as was likely to cause the death of a human being, and committing such act without any excuse for incurring the risk of causing death or such injury as aforesaid, and in any indictment* for abetting murder or for attempting to commit murder, it shall be sufficient to state that the person charged with the offence abetted the murder of the deceased or attempted to murder the deceased, as the case may be.

Upon indictment for murder, Jury may find the accused guilty of culpable homicide not amounting to murder.

XI. Upon an indictment* for murder, the Jury may find the person charged with the offence not guilty of murder, but guilty of culpable homicide not amounting to murder.

* By Act XIII. of 1865, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* as in Sections 3 and 4) "and the trial of such charges."

Upon indictment for murder, Jury may find the accused guilty of concealing, or endeavouring to conceal, the birth of a child.

XII. Upon an indictment* for the murder of a child, the Jury may find the person indicted not guilty of murder, but guilty of intentionally concealing or endeavouring to conceal the birth of such child under Section 318 of the Indian Penal Code, and the person so found guilty shall be liable to be punished under the said Section of the said Code.

Not necessary to specify the particular kind of grievous hurt.

XIII. It shall not be necessary in an indictment* for voluntarily causing grievous hurt to specify the particular kind of grievous hurt.

Provision for cases of trial for causing grievous hurt and other similar offences.

XIV. Upon an indictment* for voluntarily causing grievous hurt or for voluntarily causing hurt to any person, or for an offence under Section 336, 337, or 338 of the Indian Penal Code, the person indicted shall not be entitled to be acquitted upon the ground that the hurt caused the death of the person injured, or that the person indicted was guilty of culpable homicide.

Form of indictment in cases respecting instruments or documents.

XV. In an indictment* in which it shall be necessary to mention any instrument or document, or to make an averment or allegation respecting any instrument or document, it shall be sufficient to describe such instrument or document by any name or designation by which the same is usually known, or by the purport thereof, without setting out any copy or *fac-simile* thereof or otherwise describing the same or the value thereof.

Intent to defraud particular person need not be alleged or proved.

XVI. In an indictment* in which it shall be necessary to allege an intent to defraud, it shall not be necessary to allege or prove an intent to defraud any particular person, but it shall be sufficient to allege and prove an intent to defraud.

A party indicted for an offence may be found guilty of an attempt to commit the same, and shall be liable to the same consequences as if charged with and convicted of the attempt only. No person so tried to be afterwards prosecuted for the same.

XVII. If, on the trial of any person charged with any offence, it shall appear to the Jury upon the evidence that the person charged did not complete the offence charged, but was guilty of an offence within the meaning of Section 511 of the Indian Penal Code by attempting to commit such offence, or to cause such offence to be committed, and in such attempt doing an act towards the commission of such offence, such person shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict that the person accused is not guilty of the offence charged, but is guilty of an attempt to commit the same within the meaning of Section 511 of the Indian Penal Code, and the offender so found guilty shall be liable to be punished in the same manner as if he had been convicted upon an indictment* framed under the said Section for attempting to commit the particular offence charged in the indictment,* and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the offence for which he was so tried.

* By Act XIII. of 1865, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* as in Sections 3 and 4) "and the trial of such charges."

If person indicted for criminal misappropriation be proved guilty of theft.

XVIII. If, upon the trial of any person indicted* for criminal misappropriation of property, it shall be proved that he was guilty of committing theft of such property, he shall not by reason thereof be entitled to be acquitted of the offence charged against him.

Upon an indictment for jointly receiving, persons guilty of separately receiving may be convicted.

XIX. If, upon the trial of two or more persons indicted* for jointly receiving stolen property, it shall be proved that one or more of such persons separately received any part of such property, it shall be lawful for the Jury to convict upon such indictment* such of the said persons as shall be proved to have received any part of such property.

Abettor of an offence may be indicted and punished in the absence of the principal.

XX. A person may be indicted* and punished for abetting an offence which has been committed in consequence of the abetment, notwithstanding the person who committed the offence shall not have been indicted* or found guilty, or shall not be in custody or amenable to justice, and every abettor of an offence may be indicted, tried, and punished for the abetment as a substantive offence, and may be tried either jointly with the principal offender or separately, and punished by any of Her Majesty's Supreme† Courts of Judicature which would have power to try the principal offender, or which would have power to try the abettor if he had committed the offence himself, either in the place in which he is guilty of the abetment, or in the place in which any act shall have been committed in pursuance of the abetment.

Receiver of stolen property may be indicted and punished in the absence of the principal.

XXI. A person may be indicted* and punished for dishonestly receiving or retaining stolen property, notwithstanding the person by whose offence the possession of such property shall have been transferred, or who shall have criminally misappropriated such property or committed criminal breach of trust in respect thereof, shall not have been found guilty of such offence, or shall not be in custody or amenable to justice.

Insertion of several counts in the same indictment against the same person.

XXII. It shall be lawful to insert several counts in the same indictment* against the same person for different offences. But the Judge, before whom the person indicted shall be tried, may direct that any one or more of the counts shall be treated as a distinct indictment* or indictments,* and that the person indicted shall be tried thereupon in the same manner as if such count or counts had been in separate and distinct indictments.*

If the property alleged in an indictment for theft appear to have been taken at different times, prosecutor need not elect, unless where more than three takings or more than six months between the first and last taking.

XXIII. If, upon the trial of an indictment* for theft, it shall appear that the property alleged in the indictment* was taken or moved at different times, the prosecutor shall not by reason thereof be required to elect upon which taking or moving he will proceed, unless it shall appear that there were more than three takings or movings or that more than the space of six calendar months elapsed between the first and the last of such takings or movings, and in either

* By Act XIII. of 1865, Section 7, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* as in Sections 3 and 4) "and the trial of such charges."

† Now High Courts in Presidency Towns.

of such last mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings or movings, not exceeding three, as shall appear to have taken place within the period of six calendar months from the first to the last of such takings or movings.

Form of indictment for giving or fabricating false evidence, &c.

XXIV. In an indictment* for giving or fabricating false evidence, or for using or attempting to use false or fabricated evidence, or for any offence which by the Indian Penal Code is declared to be punishable in the same manner as the offence of intentionally giving false evidence, or for abetting or attempting to commit any of the offences aforesaid, it shall be sufficient to set forth the substance of the offence charged, without setting out any part of any proceeding either in law or in equity and without setting forth the commission or authority of the Court or person before whom such offence was committed.

Coin and Bank or Government Notes may be described simply as money.

XXV. In an indictment* in which it shall be necessary to make any averment as to any money, or any note of any Bank, or any note of Government payable on demand, or which by any law is or shall be declared to be a legal tender, it shall be sufficient to describe such money or note simply as money, without specifying any particular coin or Bank or other note, and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any such note as aforesaid, although the particular species of coin of which such amount was composed, or the amount, number, or other particulars of the note, shall not be proved, and in cases of obtaining money or any such note or notes as aforesaid by cheating, by proof that the offender obtained any piece or pieces of coin, or any such note or notes, or any portion thereof, or of the value thereof by cheating, although such piece or pieces of coin or note or notes may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person or persons, and such part shall have been returned accordingly.

Absence of general exceptions under the Penal Code to be assumed.

XXVI. It shall not be necessary to allege in an indictment* any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the general exceptions contained in Chapter IV. of the Indian Penal Code, or within the exceptions contained in Section 136, Section 300, Section 323, Section 324, Section 325, Section 326, Section 375, or Section 499 of the said Code, but every charge shall be understood to assume the absence of all such circumstances, and it shall not be necessary on the part of the prosecutor to prove at the trial the absence of such circumstances in the first instance; but the person indicted* shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may may then be given on the part of the prosecutor.

Evidence as to general exception.

It is remarkable that the Code of Criminal Procedure, (Section 237,) requires in charges for offences to be enquired into or determined by local Courts more than is necessary in charges for offences to be tried by High Courts.

* By Act XIII. of 1865, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* as in Sections 3 and 4) "and the trial of such charges."

Good faith to be presumed in certain cases.

XXVII. In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th or 10th exception to Section 499 of the Indian Penal Code, good faith shall be presumed, unless the contrary appear.

Words in indictments to be taken in the sense of the Penal Code.

XXVIII. In every indictment, words used in describing an offence, shall be deemed to have been used in the sense attached to them by the Indian Penal Code.

Trials for murder or culpable homicide, if the act which caused death, or the death took place within the jurisdiction.

XXIX. Any person accused of murder, or of culpable homicide not amounting to murder, may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if the act which shall have caused the death shall have been committed wholly or partly within the local limits of the jurisdiction of such Court, or if the death shall have taken place within such local limits, in the same manner as if both the act had been committed and the death had taken place within such local limits.

Supreme Court may deal with offence either commenced or completed within local jurisdiction.

XXX. Any person accused of an offence may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if the offence shall have been either commenced or completed within the local limits of the jurisdiction of such Court, in the same manner as if the offence had been wholly and entirely committed within such local limits.

Offence may be dealt with if either the act was done or the consequence ensued within the jurisdiction.

XXXI. Whenever the offence of which any person shall be accused, shall consist of anything which has been done and of any consequence which has ensued therefrom, the person accused may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if either the act shall have been done or the consequence shall have ensued within the local limits of the jurisdiction of such Court, in the same manner as if both the act had been done and the consequence had ensued within such local limits.

Receiving stolen property, when part only of the offence is committed within the jurisdiction.

XXXII. Whenever a person shall be accused of any offence punishable under Section 411, 412, 413, or 414 of the Indian Penal Code in respect to the receiving or retaining of stolen property, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if the offence by which the possession of the property shall have been transferred, shall have been committed either wholly or in part within the local limits of the jurisdiction of such Court, or if any of the stolen property shall have been received or retained by the person accused within such local limits.

Similar provision as to dishonest removal or concealment of property.

XXXIII. If any person shall be accused of any offence under Section 424 of the Indian Penal Code of dishonestly or fraudulently concealing or removing any property of himself, or of any other person, or of dishonestly or fraudulently assisting in the concealment or removal thereof, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of

* Now High Courts in Presidency Towns.

Judicature, if the property shall have been concealed or removed in any place within the local limits of such Court or shall have been removed from any place within such local limits.

Provision for cases on the boundaries or near the boundaries of local jurisdiction.

XXXIV. If any act shall have been committed or the consequence of any act shall have ensued on the boundaries of the local jurisdiction of such Court or so near to such boundaries as to render it doubtful whether such act was committed or such consequence ensued within such local limits or not, such act or consequence may for all purposes be stated, deemed, and taken to have been committed or to have ensued within such local limits.

Provision for the case of offences committed on a journey or voyage.

XXXV. If any person shall be accused of any offence alleged to have been committed on a journey or on any voyage in British India, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if any part of the journey or voyage shall have been performed within the local limits of the jurisdiction of such Court.

Escape from lawful custody under sentence.

XXXVI. If any person shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice or by virtue of a commutation of such sentence, or shall be charged with any offence declared to be punishable under Section 227 of the Indian Penal Code or under Section 12 of Act XXIV. of 1855 *(relating to penal servitude,)* the person accused may be dealt with, tried, and punished by any of Her Majesty's Supreme* Courts of Judicature, if such person shall be apprehended and retaken within the local limits of the jurisdiction of such Court, or if he was formerly tried by such Court, or, in the case of an escape from custody, if he shall have escaped from custody in any place within such local limits.

Justices of Peace may deal with such offences.

XXXVII. Every Justice of the Peace shall have power to deal with any person charged with an offence for which he is liable under this Act to be tried by one of Her Majesty's Supreme* Courts of Judicature, in the same manner as if such offence had been wholly and entirely committed within the local limits of such Court.

A former conviction or acquittal before a competent Court to be a bar to subsequent trial or conviction.

XXXVIII. A former conviction or acquittal before a Court of competent jurisdiction of any offence hereby made punishable by Her Majesty's Supreme* Courts of Judicature, shall be a bar to any subsequent trial or conviction for the same offence.

Certain provisions of 9th Geo. 4 c 74 shall be deemed to apply to and include offences punishable under Penal Code.

XXXIX. The provisions of Sections 10, 12, 13, 14, 15, 16, 18 and 23 of the 9th Geo. 4 c. 74, entitled "An Act for improving the administration of Criminal Justice in the East Indies," shall be deemed to apply to and to include any offence punishable under the Indian Penal Code. Section 5 of the said Act shall be deemed to include murder or culpable homicide not amounting to murder; and the words felony or misdemeanor in Section 110 of the said Act shall be deemed to extend to and include any offence declared to be punishable under the Indian Penal Code, by means of or in consequence of which the possession of property shall have been transferred.

* Now High Courts in Presidency Towns.

No indictment to be held insufficient for immaterial errors.

XL. No indictment* for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or *vice versâ*, nor because any person mentioned in the indictment* is designated by a name of Office or other description or appellation instead of his proper name, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment* or on an impossible day or on a day that never happened, nor for want of a proper or perfect *venue*, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil in any case where the value or price or the amount of damage, injury, or spoil is not of the essence of the offence.

Formal objections to indictments shall be taken before Jury are sworn. Court may amend any formal defect.

XLI. Every objection to an indictment* for uncertainty or for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the Jury shall be sworn, and not afterwards, and every Court before which any objection shall be taken by demurrer or motion to quash for any formal defect, may, if it be thought necessary, cause the indictment* to be forthwith amended in such particulars by some Officer of the Court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

No traverse allowed, but the Court may postpone trial.

XLII. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment* found against him at any Session of Oyer and Terminer or Session of Gaol delivery; provided always that if the Court upon the application of the person so indicted, or otherwise, shall be of opinion that he ought to be allowed a further time either to prepare for defence or otherwise, such Court may adjourn the Sessions to any subsequent day, and may adjourn the trial of such person to such day or to the next subsequent Session, upon such terms as to bail or otherwise as to such Court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent day or Session without entering into any fresh recognizance for that purpose.

Provision as to plea of autrefois convict or autrefois acquit.

XLIII. In any plea of *autrefois convict* or *autrefois acquit* it shall be sufficient for the peron accused to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

Prosecution for adultery not to be instituted except by the husband.

XLIV. A charge of an offence under Section 497 of the Indian Penal Code shall not be instituted except by the husband of the woman.

Prosecution for enticing away a married woman not to be instituted except by husband or person in charge of the woman.

XLV. A charge of an offence under Section 498 of the Indian Penal Code shall not be instituted except by the husband of the woman, or by the person having care of such woman on behalf of her hushand.

* By Act XIII. of 1865, Section 7, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* as in Sections 3 and 4) "and the trial of such charges."

XLVI. Upon the trial of an indictment* for either of the offences mentioned in the last two preceding Sections, it shall be necessary to prove that the charge was instituted by the husband of the woman if the charge be made under Section 497 of the Indian Penal Code, or by the husband of the woman, or by the person having care of such woman on behalf of her husband, if the charge be made under Section 498 of the said Code, and in either case that the indictment* is prosecuted by such husband or other person as the case may be, and on failure of such proof the indictment* shall be quashed and the person accused shall be discharged.

On trial of offence under last two Sections, proof necessary of husband or person in charge of woman having instituted the charge.

XLVII. Whenever any person shall be sentenced by any of Her Majesty's Supreme† Courts of Judicature to rigorous imprisonment, or to imprisonment with hard labor, or to solitary confinement, he shall be imprisoned in the House of Correction, whether such House of Correction be under the control of the Sheriff or not.

Person sentenced to rigorous confinement may be imprisoned in House of Correction.

XLVIII. Whenever any person shall be sentenced by any of Her Majesty's Supreme† Courts of Judicature to transportation or penal servitude, such person shall be kept in the House of Correction as the place of intermediate custody, whether such House of Correction be under the control of the Sheriff or not.

Person sentenced to transportation or penal servitude may be kept in the House of Correction

XLIX. If the Sheriff be not the Officer in whom the control of the House of Correction is vested, he shall cause any person sentenced as mentioned in either of the last two preceding Sections to be delivered to the Officer in whom the control of the House of Correction is vested or to the keeper of such House of Correction, together with a warrant to be signed by a Judge of the said Supreme† Court authorizing the detention of such person. Such Officer or keeper shall be bound to receive the person so delivered over to his custody, and they both shall be responsible for the safe custody of such person.

If the Sheriff be not the keeper of the House of Correction, how he shall proceed

L. All Constables and Police Officers are hereby empowered to aid and assist the Sheriff in carrying to the House of Correction any person sentenced as aforesaid.

All Constables, &c., bound to assist

LI. If the Sheriff be not the Officer in whom the control of the House of Correction is vested, he shall be absolved from all responsibility in respect of the custody of any person sentenced as aforesaid, from the time such person shall be delivered to the custody of the Officer in whom the control of the House of Correction is vested, or to the keeper of such House of Correction.

Sheriff absolved from responsibility.

LII. Whenever any person shall be sentenced by a Justice of the Peace or Police Magistrate to rigorous imprisonment, or to imprisonment with hard labor, for any offence committed within the local limits of the jurisdiction of any of Her Majesty's Supreme Court† of Judicature, the person so sentenced shall be committed to the custody of the Officer in whom the control of the House of Correction is vested, whether such House of Correction, be under the control of the Sheriff or not, or of the keeper of such House

Person sentenced by Justice of Peace to rigorous imprisonment or hard labor may be committed to the House of Correction.

* By Act XIII. of 1865, Section 7, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* as in Sections 3 and 4) "and trial of such charges."

† Now High Courts.

of correction, and such Officer and keeper shall be responsible for the safe custody of such person.

Provision for persons now in the House of Correction.

LIII. From and after the passing of this Act, all persons who are confined at the date of the passing of this Act in the House of Correction, whether under the sentence of any of Her Majesty's Supreme Courts* of Judicature, or of any Justice of the Peace or Police Magistrate, shall be considered to be and shall remain in the custody of the Officer in whom the control of such House of Correction is vested, whether such Officer be the sheriff or not or of the keeper of such House of Correction, and such Officer and keeper shall be responsible for the safe custody of all such persons.

Commencement of Act at Fort William in Bengal.

LIV. This Act shall commence and take effect in Her Majesty's Supreme* Court of Judicature at Fort William in Bengal, or in any Court to which the whole or any part of the Criminal jurisdiction of that Court shall be transferred, from the time of the passing of the Act, and shall, as far as the same is applicable, extend to all indictments† and proceedings in respect of any offence punishable under the Indian Penal Code, which have been or shall be presented or commenced in the said Court or in any other Court to which the whole or any part of the Criminal jurisdiction of such Court shall be transferred.

Commencement of Act at Madras and Bombay.

LV. This Act shall commence and take effect in Her Majesty's Supreme* Courts of Judicature at Fort St George and Bombay respectively, or in any Courts to which the whole or any part of the Criminal Jurisdiction of those Courts respectively shall be transferred, from the time at which it shall be notified in the Official Gazette by an order of the Governor in Council of Fort St. George and Bombay respectively, that the Act is to take effect in such Courts; and from such time the provisions of the Act shall, so far as the same is applicable, extend to all indictments† and proceedings in respect of any offence punishable under the Indian Penal Code which have been or shall be presented or commenced in the said Courts or in any other Courts to which the whole or any part of the Criminal jurisdiction of such Courts shall be transferred.

Act XVI. of 1852 how far repealed.

LVI. From the time at which this Act shall take effect in any of Her Majesty's Supreme* Courts of Judicature as provided in the last two preceding Sections, Act XVI. of 1852 is repealed so far as it relates to indictments† and proceedings in such Court, except as to offences not punishable under the Indian Penal Code.

Definitions.

"Indictment."

"Finding of the indictment."

Number and gender.

LVII. In the construction of this Act, unless where a contrary intention appears from the context, the word "indictment,"† shall be understood to include information, inquisition, or presentment, as well as indictment,† and also any plea, replication, or other pleading; and the term "finding of the indictment"† shall be understood to include the taking of an inquisition, the exhibiting of an information, and the making of a presentment; and words importing the singular number or masculine gender shall include several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter and

* Now High Court.

† By Act XIII. of 1865, Section 7, it is declared that "in Act XVIII. of 1862, the word 'indictment' shall be understood to include the word 'charge,' and all the provisions of the said Act shall apply to charges recorded as aforesaid" (*i. e.* as in Sections 3 and 4) "and trial of such charges."

Acts done.

thing. Words which refer to acts done shall include illegal omissions. The words "British India" shall denote the territories that are or shall become vested in Her Majesty by the Statute 21 and 22, Vic. c. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

"British India"

"Property."

ACT No. XIII. OF 1865.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st March, 1865.)

An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original Criminal jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.

WHEREAS it is expedient to amend the procedure of the High Courts of Judicature at Fort William in Bengal, at Madras, and at Bombay, in the exercise of their original Criminal jurisdiction, and also to provide for the exercise by such Courts of original Criminal jurisdiction under the Commission of the Governor General of India in Council, or of either of the Governors in Council of Madras and Bombay, in places other than the Presidency Towns, or at several such places by way of circuit; It is enacted as follows:—

Preamble.

Preliminary.

I. This Act may be cited as "The High Courts' Criminal Procedure Amendment Act, 1865."

Short title.

II. In this Act, unless there be something repugnant in the subject or context—

Interpretation clause.

"High Court" denotes Her Majesty's High Courts of Judicature at Fort William in Bengal, at Madras, and at Bombay, respectively.

"High Court."

"Chief Justice," "Judge," "Registrar," and other words denoting any particular Officer, respectively include any person for the time being authorized to act as such Chief Justice, Judge, Registrar, or other Officer.

"Chief Justice." "Judge," &c.

"Magistrate" denotes any person exercising any of the powers of a Magistrate under the Code of Criminal Procedure, and includes Police Magistrates in any Presidency Town.

"Magistrate."

"Clerk of the Crown" includes, besides such Officer, a Crown Prosecutor and any Officer, specially appointed by the Governor General of India in Council or the Governor in Council of Madras or Bombay to discharge the functions given by this Act to the Clerk of the Crown, in respect of any sittings of a Judge or Judges of the High Court in a place other than the usual place of sitting, or in respect of any sittings of a Barrister under the forty-fourth Section of this Act.

"Clerk of the Crown."

"British India."

"British India" denotes the Territories which are or may become vested in Her Majesty or her successors under the Statute 21 and 22 Vic., cap. 106, except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Gender and Number.

Words importing the masculine gender include females: words in the singular number include the plural, and words in the plural number include the singular.

Of Charges where the Accused is committed in a Presidency Town.

Charge to be delivered to Clerk of the Crown with commitment within the local limits of the ordinary original Civil jurisdiction.

III. Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person for trial before the High Court for an offence committed, or which according to law may be dealt with as if it had been committed within the local limits of its ordinary original Civil jurisdiction, shall, together with all examinations, informations, bailments, and recognizances now required to be delivered to such Court before the trial, deliver to the Clerk of the Crown a written instrument of charge signed by him, stating for what offence such person is so committed or held to bail.

See Sections 227-8-9 of the Code of Criminal Procedure for the rules to be followed by a Magistrate and Justice of the Peace.

Clerk of the Crown to consider and, if he will, to amend, alter, or add to the charge.

Charge with amendments, alterations or additions (if any) to be recorded.

IV. The Clerk of the Crown shall peruse and consider the charge, and may, if he consider it necessary or expedient so to do, amend, alter, or add to the same. The charge with such amendments, alterations, or additions, if any, shall be recorded in the High Court, and the person charged shall be entitled to have a copy of such charge, with such amendments, alterations, or additions (if any) gratis.

A similar power is by Section 234, Code of Criminal Procedure, conferred on Mofussil Courts. Act XVIII. of 1862, Section 1 should be read with the foregoing Section.

Accused to have copies of examinations.

V. The person charged shall also be entitled to copies of the examinations of the witnesses upon whose depositions he has been so committed or held to bail, on payment of a reasonable sum for the same, not exceeding one anna for each folio of ninety words.

Effect of charge.

VI. Upon charges recorded as aforesaid, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions contained in the eighth Section of this Act) shall be arraigned at suit of the Crown, and the verdict shall be recorded thereupon.

Provisions of Act XVIII of 1862 as to indictments to apply to charges preferred under this Act.

VII. In Act XVIII. of 1862 *(to repeal Act XVI. of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal justice in Her Majesty's Supreme Courts of Judicature)*, the word "indictment" shall be understood to include the word "charge," and all the provisions of the said Act shall apply to charges recorded as aforesaid and the trial of such charges.

Nolle prosequi on unsustainable charge

VIII. When any such charge shall have been recorded in the High Court as aforesaid, and shall at any time before the person charged is arraigned, appear to the Judge of the High Court who would in ordinary course try the same, to be clearly unsus-

tainable, an entry to that effect may be made on the charge by such Judge. Such entry may be made without the fiat of the Advocate General, and shall have the effect of a *nolle prosequi* upon the charge, but shall not operate as an acquittal of the person charged, unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted.

Of Grand Juries.

After commencement of this Act, Grand Jury not to be summoned.

IX. From and after the date on which this Act shall come into operation, no warrant or precept shall be issued to the Sheriff or other Officer directing him to summon any persons to attend and serve as Grand Jurors. All persons who but for this Act would have been exempt from serving on Common Juries shall be liable, except as hereinafter provided, to serve on such Juries.

No one to be charged on the presentment or inquisition of Grand Jurors, unless they have been summoned before the commencement of this Act.

X. No person shall be brought before the High Court on the presentment or inquisition of Grand Jurors, unless such presentment or inquisition shall have been made by Grand Jurors who shall have been duly summoned before this Act comes into force: Provided that if any precept for summoning a Grand Jury shall have been issued for the then next coming Sessions of the High Court, such Grand Jury shall proceed at such Sessions as if this Act had not passed.

Of Juries in Presidency Towns.

Certain trials to be held before Special Jurors.

XI. Every person tried in a Presidency Town upon a charge of having committed an offence which is punishable with death, or upon any other charge if a Judge of the High Court shall so order, shall be tried before a Special Jury.

The Jurors' Book for the current year, to be taken as giving the first list of Jurors and Special Jurors.

XII. The Jurors' Book for the year current when this Act comes into force, shall be taken as containing a correct general list of persons qualified and liable to serve as Jurors under this Act: and those persons whose names are entered in the said Jurors' Book as being privileged to serve on Grand or Special Juries only, shall be deemed to be persons privileged and liable to serve only as Special Jurors under this Act: and a list of such last mentioned persons, to be called the "Special Jurors' List," shall forthwith, and subject to such rules as shall be prescribed by the High Court, be prepared by the Clerk of the Crown or such Officer as the Chief Justice of the High Court shall direct.

The number of Special Jurors in the first list to be allowed to die down to two hundred.

XIII. The number of persons included in the "Special Jurors' List" prepared as in the last preceding Section is provided, shall be permitted gradually from year to year to diminish, until the whole number of names remaining on such list shall not exceed two hundred: and no new name shall be added to such list until the number shall have been so diminished by the death or change of residence of the persons originally included in the list, or by other loss of such qualification as gave them the privilege of serving only as Grand or Special Jurors. After the number shall once have been reduced as aforesaid, the names of not more than two hundred persons shall ever at any one time be entered in the Special Jurors' List.

After which the number of Special Jurors not to exceed two hundred.

Special Jurors exempted from serving on Common Juries.

XIV. All persons whose names are entered in the "Special Jurors' List" shall be exempted from serving on any other than Special Juries.

Preparation of lists of Jurors and Special Jurors.

XV. The Clerk of the Crown, or such other Officer as the Chief Justice of the High Court shall direct, shall, before the first day of April in each year; and subject in all respects to such rules as the High Court shall from time to time prescribe, prepare a list of all persons qualified and liable to serve as Jurors: and shall before the fifteenth day of April which shall first occur after the reduction of the number of names in the "Special Jurors' List" as aforesaid, and before every subsequent fifteenth day of April, but subject always to such rules as aforesaid, take from the general list of Jurors the names of such persons as he may think fit, regard being had to their property, character, and education, and shall enter the same in the "Special Jurors' List."

Officer preparing the lists to have full discretion: no appeal from his decision.

XVI. The Clerk of the Crown or other Officer appointed by the Chief Justice shall, subject to such rules as aforesaid, have full and entire discretion to prepare the said lists as shall seem to him to be proper, and there shall be no appeal from or review of his decision.

Lists of Jurors to be published in the Gazette.

XVII. The list of persons qualified or liable to serve as Jurors, and the "Special Jurors' List," respectively signed by the Officer by whom the same shall have been prepared, shall be published once in the Official Gazette, before the first day of May next after their preparation, and copies of the said lists shall be affixed to some conspicuous part of the Court House.

Jurors and Special Jurors to be summoned for each Sessions

XVIII. Out of the names contained in the lists aforesaid, there shall be summoned for each Sessions thirty-six of those who are qualified and liable to serve on Special Juries, and seventy-two of those who are qualified and liable to serve on Common Juries.

Of Challenges of Jurors in the Presidency Towns.

Challenges.

XIX. A peremptory challenge to the number of twenty in Common Juries and ten in Special Juries, shall be allowed; but there shall be no challenge to the array, and save as aforesaid, the following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person charged:—

(1.) Some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force.

(2.) Some presumed or actual partiality in the Juror.

(3.) A previous conviction of the Juror under the Indian Penal Code, or the criminal law administered in the Supreme Courts of Judicature or the Courts of the East India Company previously to the enactment of such Code.

Judge to try challenge.

XX. The Judge before whom the person charged is about to be tried shall try any challenge, other than a peremptory challenge, and if he allow the challenge, the Juror shall be set aside.

High Court to retain its present jurisdiction as to Jurors in Presidency Towns except as altered by this Act.

XXI. Save as hereinbefore provided, the High Court shall retain all its present powers respecting the summoning, empannelling, qualification, challenging, and service of Jurors in the Presidency Towns: and shall have power to make such rules on these subjects (not

nconsistent with the provisions of this Act) as shall seem to it to be proper. All rules relating thereto now in force in the High Court shall (so far as they are not inconsistent with this Act) remain in full force until repealed or altered by new rules made under this Section,

Of Sittings under a Commission.

Jurisdiction of Judge acting under Commission from Governor General of India in Council.

XXII. From and after the commencement of this Act, whenever it shall appear to the Governor General of India in Council convenient that the jurisdiction and power vested in the High Court at Fort William in Bengal should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, whether within or without the Bengal Division of the Presidency of Fort William, other than the usual place of sitting of such Court, or at several such places by way of circuit, and the Governor General of India in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court of Judicature at Fort William in Bengal in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of such High Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

Jurisdiction of Judge acting under Commission of Governor in Council of Madras.

XXIII. From and after the commencement of this Act, whenever it shall appear to the Governor in Council of Madras convenient that the jurisdiction and power vested in the High Court of Judicature at Madras should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same High Court, whether within or without the Presidency of Madras, other than the usual place of sitting of such court or at several such places by way of circuit, and such Governor in Council shall, by this Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or place accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Madras in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

Jurisdiction of Judge acting under Commission of Governor in Council of Bombay.

XXIV. From and after the commencement of this Act, whenever it shall appear to the Governor in Council of Bombay convenient that the jurisdiction and power vested in the High Court of Judicature at Bombay should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same Court, whether within or without the Presidency of Bombay, other than the usual place of sitting of such Court, or at several such places by way of circuit, and such Governor in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to

hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Bombay in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

High Court may allot jurisdiction to Judge acting under Commission.

XXV. The High Court may allot to a Judge or Judges acting under a Commission as aforesaid, such part of the extraordinary original Civil jurisdiction, and of the Civil and Criminal Appellate jurisdiction, and of the jurisdiction as a Court of revision, or reference, which it is competent to exercise at its usual place of sitting, as the High Court may consider can be more conveniently exercised at any place or places mentioned in such Commission.

Commission to specify time and place during and in which it shall remain in force.

XXVI. Every Commission issued as aforesaid under any of the preceding Sections shall specify the time during which and the Districts or places within which such Commission shall remain in force; and such time and the limits of such Districts or places shall be notified in the Official Gazette.

Power to appoint an Associate Judge.

XXVII. The Governor General of India in Council or the Governor of Madras or of Bombay in Council, as the case may be, may, by such Commission as aforesaid, associate with such Judge of the High Court any Barrister-at-law of not less than five years' standing, or any Sessions Judge. The person so associated shall be called the Associate Judge, and, unless directed to try persons separately as hereinafter provided, may sit with the Judge of the High Court during the trials of persons tried under such Commission. Whenever any Associate Judge sits with the Judge of the High Court, the latter shall preside, conduct the case, and pronounce judgment.

Charge to be delivered with record of preliminary enquiry without the local limits of the ordinary original Civil jurisdiction.

XXVIII. Any Justice of the Peace or Magistrate without the local limits of the ordinary original Civil jurisdiction of the High Court, before whom any European British subject shall be brought for an offence committed without those limits, shall, immediately after the conclusion of the preliminary enquiry, and if he shall determine to commit or hold to bail such person for trial, give notice thereof to the High Court to which the commitment or bailment would ordinarily be made, and shall send to the Clerk of the Crown, together with the record of the preliminary enquiry, and translations into English of any writings not in that language, a written instrument of charge signed by him stating for what offence such person is committed or held to bail. On receipt of these documents, the Clerk of the Crown shall proceed as directed in the like case in the fourth Section, and the person charged shall be entitled to copies in like manner as he would be entitled to copies under the fifth Section of this Act. If a Commission under which the person charged might be tried shall have been issued, the High Court shall consider at what place the person charged can be most conveniently tried, and shall give directions accordingly: if no such Commission shall have been issued, the High Court shall obtain information from the Government as to whether such Commission is about to issue, and shall then give such direc-

tions as last aforesaid. Provided always that, if the commitment or bailment have been made after the issue and during the running of a Commission under which the person charged might be tried, the notice by this Section directed to be given to the Clerk of the Crown shall be given, and the documents directed to be sent to the Clerk of the Crown shall be sent, to the Clerk of the Crown with the Judge of the High Court acting under the Commission. Such Judge shall have all the powers given to the High Court by this and the next succeeding Section.

The charge shall be deemed a charge under the Criminal Procedure Code.

XXIX. The charge, whether it shall or shall not have been amended, altered or added to under the last preceding Section, shall, if the person charged be directed to be tried at a place other than the usual place of sitting of the Court, have the same effect as a charge under the thirteenth Chapter of the Code of Criminal Procedure, and the person charged shall be tried thereon before a Judge of the High Court, whether sitting by himself or with an Associate Judge. But if, at any time before the High Court shall have directed where the trial of the person charged shall take place, the charge appear to the High Court to be clearly unsustainable, an entry to that effect may be made by the proper Officer of the Court at any time before the commencement of the trial. Such entry shall have the effect of staying proceedings on the charge, but shall not operate as an acquittal of the person charged, unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted. If the person charged be directed to be tried at the usual place of sitting of the Court, the charge, whether amended, altered, or added to as last aforesaid or not, shall have the same effect as, and be deemed to be, a charge under the sixth, seventh, and eighth Sections of this Act.

If unsustainable, the proceedings may be stayed.

Procedure pending directions of High Court.

XXX. Pending the directions of the High Court as to the place of trial, every such British subject as is referred to in the twenty-eighth Section of this Act shall (if not out on bail) be committed by the Justice of the Peace or Magistrate for intermediate custody to the nearest Criminal jail in which he can be most conveniently confined. If the trial shall be directed to take place in the usual place of sitting of the Court, the Justice of the Peace or Magistrate shall bind over the person charged to appear and take his trial at such usual place of sitting, or shall commit him to the jail at such place. If the High Court shall direct that the person charged be tried elsewhere than in its usual place of sitting, the Justice of the Peace or Magistrate shall bind him over to appear and take his trial in the place directed, or (as the case may be) shall, if necessary, cause him to be removed to the Criminal jail of or nearest to the place at which such person is directed to be tried; and the Officer in charge of such Criminal jail shall keep such person in safe custody, until discharged in due course of law.

High Court may order European British subjects committed in certain Districts in certain seasons of the year to be tried at a particular place and confined in a particular jail.

XXXI. It shall be lawful for the High Court to direct that all European British subjects committed or bailed for trial within certain specified Districts or during certain specified periods of the year, shall be tried at the usual place of sitting of the Court, or to direct that they shall be tried at a particular place named; and also to order that such European British subjects

shall, if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners. In any such case the High Court may direct, further, that the notice required by the twenty-eighth Section of this Act to be given, and the papers required by that Section to be sent, to the Clerk of the Crown, shall be given and sent to a particular Clerk of the Crown named by the High Court in that behalf. Every person bailed or committed to take his trial at any particular place in compliance with a general direction under the provisions of this Section, shall be dealt with in all respects as if he had been bailed or committed in complaince with a special direction unber the twenty-eighth Section of this Act.

Jurisdiction over European British subjects tried under Commission.

XXXII. When the High Court shall have directed that any European British subject shall be tried at any place other than its usual place of sitting, the Judge of the High Court acting under such Commission as aforesaid in the place and manner therein mentioned, shall, whether sitting by himself or with the Associate Judge, have and exercise in respect of such European British subject the same jurisdiction, power, and authority which would be had and exercised by the High Court at its ordinary place of sitting if the said European British subject had been committed or bailed to the said High Court at its ordinary place of sitting for the offence with which he is charged. But the trial of the said European British subject before such Judge of the High Court acting under such Commission as aforesaid, and whether sitting by himself or with the Associate Judge, shall, subject to the exceptions hereinafter declared, be conducted in accordance with the rules and provisions contained in the Code of Criminal Procedure, and thereby made applicable to trials of persons committed or bailed for trial before the Court of Session for offences triable by such Court.

Code of Criminal Procedure to apply to the trial of such subjects except as thereinafter declared.

Jurisdiction over persons not European British subjects tried under Commission.

XXXIII. The Judge of the High Court acting under such Commission in the place and manner therein mentioned, and whether sitting by himself or with the Associate Judge, shall, if he shall think fit, have and exercise the same jurisdiction, power, and authority in respect of any person committed or bailed for trial under the Code of Criminal Procedure before the Court of Session at the place and within the time in such Commission mentioned, as might be had and exercised by the Court of Session to which such person was committed or bailed. The trial of such person shall be conducted, subject to the exceptions hereinafter declared, in accordance with the rules and provisions contained in the Code of Criminal Procedure, and thereby made applicable to trials before a Court of Session of persons committed or bailed to such Court for offences triable by the same.

Trials under Commission to be by Jury.

XXXIV. All trials before a Judge of the High Court acting under such Commission as aforesaid, and whether sitting by himself or with the Associate Judge, shall be by Jury.

Summoning of Jurors to serve on trials under Commission.

XXXV. Whenever the Governor General of India in Council or the Governor of Madras or of Bombay in Council, as the case may be, shall have signified to the High Court that it is intended to issue a Commission as aforesaid to any Judge or Judges of the High Court authorizing and directing sittings of the said Judge or Judges in any place,

the High Court shall give notice of such intention to the Court of Session at such place, and thereupon the said Court of Session shall take and cause to be taken the measures prescribed by Sections three hundred and thirty-six to three hundred and forty, both inclusive, of the Code of Criminal Procedure for the summoning of Jurors; and in addition to the persons so summoned as Jurors, the said Court of Session shall, if it shall think needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the Military service, resident within ten miles of its place of sitting, as the Court shall consider to be necessary to make up the Juries required for the trial of persons charged with offences before the Judge of the High Court acting under Commission as aforesaid. All commissioned and Non-Commissioned Officers so summoned shall be liable to serve on such Juries, notwithstanding anything contained in the Code of Criminal Procedure, but no Commissioned or Non-Commissioned Officer shall be summoned whom his commanding Officer shall desire to have excused on the ground of urgent Military duty or for any other special Military reason. The Juries for the trial of persons triable by such Judge of the High Court acting under such Commission as aforesaid, shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned under the said Sections of the Code of Criminal Procedure and from the Commissioned and Non-Commissioned Officers summoned as aforesaid, or, if no such Officers have been summoned, then solely from the persons summoned under the same Sections.

Military men not exempt.

XXXVI. If the person charged shall be a European British subject and shall so require before the Jury shall be empannelled, the majority of the Jurors shall consist of Europeans or Americans. If such a Jury cannot be procured, the person so charged shall be sent for trial by the High Court in its usual place of sitting.

Jury for trial of European British subject.

XXXVII. On every trial mentioned in the thirty-fourth Section of this Act, the Jury shall consist of twelve persons, and unanimity, or a majority of not less than nine with the concurrence of the presiding Judge, shall be necessary for a verdict of guilty. In default of such unanimity, or of such majority and concurrence, the prisoner shall be acquitted.

Number of Jury requisite to verdict of guilty.

XXXVIII. During the trial of any person before a Judge of the High Court acting under Commission as aforesaid, or before a Judge of the High Court and an Associate Judge sitting together, any act, not of a judicial nature, which the Code of Criminal Procedure requires to be done by the Court of Session, may be done by the Clerk of the Crown or by any Officer of the Court directed by such Judge to perform such act.

Acts not of a judicial nature may be done by Clerk of the Crown.

XXXIX. So much of the three hundred and eightieth Section of the Code of Criminal Procedure as requires the confirmation by the Sudder Court of sentences of death passed by a Court of Session, and so much of the said Section as requires from the Court a statement of the grounds on which a person convicted of an offence made punishable by death by the Indian Penal Code has been sentenced to a punishment other than death, shall not apply to sentences by a Judge of the High Court acting under Commission as aforesaid.

Portions of Section 380 of Criminal Procedure Code not to apply to sentences by High Court Judge.

Portion of 26th Chapter of Criminal Procedure Code not to apply to sentences of High Court Judge.

XL. So much of the twenty-sixth Chapter of the Code of Criminal Procedure as requires judgment to be passed by a Criminal Court in any particular form, and as requires that the sentence or finding shall be recorded in any particular form, shall not apply to judgements, sentences, or findings in trials before a Judge of the High Court acting under such Commission as aforesaid, whether sitting by himself or with an Associate Judge; but the Judge shall pass judgment and shall record or cause to be recorded the sentence and finding in such form as he shall think proper.

Power to reserve for High Court any question of law or evidence.

XLI. When any person has been convicted of an offence before a Judge of the High Court acting under Commission as aforesaid, the Judge, if he think proper, may reserve for the decision of the High Court any question of law or of the admissibility of evidence which has arisen in the course of the trial of such person. If the Judge reserve no such question, he shall forward the prisoner with a copy of his sentence and a warrant for the execution of the same to the Magistrate or other Officer in charge of the jail of the District at which the trial was held, and such Magistrate or other Officer shall proceed thereupon in like manner as he is directed by the Code of Criminal Procedure to proceed in respect of sentences by a Court of Session not requiring confirmation. If the Judge reserve any question of law or of the admissibility of evidence, the person convicted shall, pending the decision of the High Court thereon, be dealt with in like manner as persons sentenced by a Court of Session in cases where the sentence requires the confirmation of the Sudder Court under the Code of Criminal Procedure. If the decision of the High Court be adverse to the person convicted, such decision shall be forwarded to the Court of Session of the District in which the trial took place, in like manner as is directed by the three hundred and eighty-third Section of the said Code with reference to orders of confirmation of sentences, and thereupon the said Court of Session and all other persons shall proceed as if the person convicted had been sentenced by such Court of Session, and as if such sentence had been confirmed by the Sudder Court under the Code of Criminal Procedure.

Procedure where no such question reserved.

Save as aforesaid, Criminal Procedure Code to apply to Juries under Commission.

XLII. Save as is hereinbefore otherwise provided, the Code of Criminal Procedure shall apply to the constitution and formation of Juries for the purpose of trials before a Judge of the High Court acting under Commission as aforesaid, or before such Judge and an Associate Judge, and to trials before such Judge of the High Court or before such Judge and an Associate Judge and to sentences by such Judge of the High Court, and to the carrying into execution of such sentences.

High Court Judge may direct Associate Judge to try any one triable under Commission, not an European British subject.

XLIII. If the Judge of the High Court think fit, he may direct the Associate Judge to try any person, other than a European British subject, who under this Act is triable by such Judge of the High Court. The trial of such person shall be regulated without exception by the rules of the Code of Criminal Procedure applicable to trials of persons committed or bailed for trial before a Court of Session, and such person, if convicted, shall be dealt with as if he had been convicted before the Court of Session of the District in which the trial was held. Any person other than a European British subject, who has been committed or bailed for trial before the Court of

Session of any place mentioned in such Commission as aforesaid, but who has not been tried under this Act during the time for which the Commission remains in force, shall be tried by the Court of Session to which he was committed or bailed, as if this Act had not passed.

Power to Governor General of India in Council to appoint a Barrister to hold sittings under Commission at places not hereinbefore referred to.

XLIV. From and after the commencement of this Act, it shall be lawful for the Governor General of India in Council by his Commission to authorize and direct any Barrister-at-law of not less than five years' standing, although not a Judge of any High Court, to hold sittings at any place in British India, other than the usual place of sitting of such Court, and other than any place referred to in the twenty-second, twenty-third, and twenty-fourth Sections of this Act, or at several such places by way of circuit. The Barrister acting under such Commission, in the places and manner therein directed shall have and exercise the same jurisdiction, power, and authority as (subject to the provisions hereinbefore contained) would be had and exercised by a Judge of the High Court acting under any such Commission as aforesaid.

Commencement of Act.

XLV. This Act shall commence and come into operation on such date as the Governor General of India in Council shall appoint by notification in the Gazette of India.

Act not to extend to Straits' Settlement.

XLVI. This Act shall not extend to the Settlement of Prince of Wales' Island, Singapore, and Malacca.

APPENDIX C.

LAWS RELATING TO OFFENCES COMMITTED IN FOREIGN TERRITORIES, AND OF EXTRADITION.

ACT No. I. of 1849.

PASSED BY THE HON'BLE THE PRESIDENT OF THE COUNCIL OF INDIA IN COUNCIL ON THE 27TH JANUARY, 1849.

An Act to provide more effectually for the punishment of offences committed in Foreign states.

Whereas divers Regulations of the Bengal, Madras and Bombay Codes have been made, from time to time, for the trial of native subjects of the British Government, committing criminal offences beyond the limits of the British Provinces, and it is expedient to make the same more effectual and uniform, and to extend the application thereof: It is enacted as follows:

1. The undermentioned Regulations and parts of Regulations are rescinded, that is to say:

Regulation V. of 1809, Regulation VIII. of 1813, Section 6 of Regulation I. and the whole of Regulation IX. of 1822, and Regulation VIII of 1829 of the Bengal Code; Regulation II. of 1829, and Regulation VII. of 1832 of the Madras Code; Section 4 of Regulation XI. of 1827 of the Bombay Code; except so far as any of them rescinds any former Regulation.

2. All subjects of the British Government and also all persons in the Civil or Military service of the said Government, while actually in such service,

and for six months afterwards, and also all persons who shall have dwelt for six months within the British Territories under the Government of the East India Company, subject to the laws of the said territories, who shall be apprehended within the said territories, or delivered into the custody of a Magistrate within the said territories, whenever apprehended, shall be amenable to the law for all offences committed by them within the territory of any Foreign Prince or State; and may be bailed or committed for trial as hereafter provided, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British territories.

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And be it further enacted, that all His Majesty's subjects, as well servants of the said United Company as others, shall be and are hereby declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences and crimes whatever, by them or any of them done or to be done, or committed, in any of the lands or territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in India.

3. The committing Magistrate immediately, and before the trial, shall report every such case to the Government, and shall obey the orders which he shall receive thereon.

4. The Government may order the trial to be had before one of the established Courts of Criminal Judicature, which would be competent to try the person charged for the offence, if it had been committed within the British territories.

5. When the offence is charged to have been committed in the territory of any Foreign Prince or State, administered by officers acting under the authority of the East India Company, in which territory a Court, competent to try the person charged for the offence, is established by authority of the Governor-General of India in Council, the Government may order such person to be conveyed in custody, out of the British territories, for the purpose of delivering him up for trial before such Court.

6. When the person charged is committed, the form of the warrant shall specify the commitment to be until the orders of Government can be received and acted on; when he is bailed, the form of the bail bond shall be, in the first instance, to appear before the Magistrate on a certain day assigned, allowing reasonable time for receipt of the orders of Government, and on such subsequent days as the Magistrate from time to time shall require; and if Government shall order the person charged to be tried within the Presidency, the Magistrate may cause the bail bond to be renewed in the usual form, to appear and take his trial at the Court appointed for the purpose.

7. In either case the special order of the Government shall be deemed full authority, either for the trial and punishment of the person charged within the British territories, or for conveying him, in custody, out of the British territories, as aforesaid.

8. The word "Government," as used in the third and following sections of this Act, means the Governor or Governor in Council or other person or persons having supreme executive authority in the Presidency or place to which the Committing Magistrate belongs.

9. The authority hereinbefore given to the Government may be also exercised by any Commissioner or other person acting in the Civil Service of the East India Company, to whom the Governor-General in Council shall have delegated authority to receive reports and give orders in cases within this Act.

ACT No. VII. of 1854.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL ON THE 17TH FEBRUARY, 1854.

An Act for the apprehension, within the territories under the Government of the East India Company, of persons charged with the commission of heinous offences beyond the limits of the said territories, and for delivering them up to justice, and to provide for the execution of warrants in places out of the jurisdiction of the authorities issuing them.

Whereas it is expedient to provide for apprehending and delivering up to justice persons, whether subjects of the British or of any Foreign Government, who shall take refuge or be found in any part of the territories under the Government of the East India Company, and shall be charged with having been guilty of heinous offences in any part of the dominions of Her Majesty, or in the territories of any Foreign Prince or State; to facilitate the execution in any part of the territories under the Government of the East India Company of warrants issued by competent officers in any other parts thereof; and to enable the Government of any Presidency or place within such last-mentioned territories to carry out treaties entered into by or on behalf of Her Majesty or the East India Company with any Foreign Prince or State; It is enacted as follows:—

I. If requisition be made by or by the authority of the person or persons for the time being administering the executive Government of any part of the dominions of Her Majesty, to the Government of any part of the British territories in India, to deliver up to justice any person accused of having been guilty of any heinous offence in any part of Her Majesty's dominions subject to the Government making the requisition, and who shall be, or shall be supposed to be, in any part of the British territories in India subject to the Government to which the requisition shall be made, or if a similar requisition be made by any Foreign Prince or State, or by any duly authorized Minister or Officer thereof, in respect of a person accused of having been guilty of any heinous offence in any part of the territories such Foriegn Prince or State, it shall be lawful for the Government to which the requisition shall be made, if it shall see fit so to do, to issue an order in writing for inquiry into the truth of the charge; and such order shall be sufficient proof of the requisition having been duly made, and a sufficient justification for all acts done in pursuance thereof.

II. The order shall be signed by one of the Secretaries to the Government; it shall be directed to all Magistrates* and Justices of the Peace of the Presidency or place under the control of such Government; it shall signify that the requisition has been made, shall state the nature of the offence charged, the name or other designation, if the name be not known, of the person accused, and any other description of him that may be thought necessary, and it shall require the Magistrates* and Justices to whom it shall be directed, or any of them, to enquire into the truth of the charge, and to proceed in pursuance of this Act.

III. Upon the production of the order to any such Magistrate* or Justice of the Peace, he shall have the same powers as if the offence charged had been committed within his jurisdiction.

IV. If the evidence adduced shall in the judgment of the Magistrate* or Justice of the Peace be sufficient to justify the apprehension of the person accused for the offence, the Magistrate* or Justice of the Peace shall issue his warrant for the apprehension of such person. The warrant shall be issued in the same manner as a warrant for an offence committed within the jurisdiction of the Magistrate* or Justice of the Peace issuing it, and shall contain a memorandum stating that the warrant is issued under this Act, and if the warrant be issued under an order of Government, shall also state the fact and specify the Government. The memorandum may be to the following effect:—

This warrant is issued under Act No. VII. of 1854, and is issued under ——————— an order of the Government of ———————

V. The warrant of any Magistrate* or Justice of the Peace having jurisdiction in any part of the territories under the Government of the East India Company for the arrest of any person charged with having committed any offence, whether such warrant be issued under the provisions of this Act or not, may be executed within the jurisdiction of any other Magistrate* or Justice of Peace having jurisdiction in any part of the said territories, whether in the same Presidency or not, upon having a written authority under the hand and seal of the Magistrate* or Justice of the Peace, within whose jurisdiction it may be executed, previously endorsed thereon, and which endorsement may be to the following effect:—

To the Nazir [or other Officer as the case may be] of the Zillah of

"This warrant may be executed in the zillah or district of

" (describing the zillah or district of the indorsing Magistrate or Justice of the Peace) by any of the Officers to whom the same is directed or by [describing by his name of Office the Officer to whom a similar warrant, issued by the indorsing Magistrate or Justice of the Peace, would be directed.]

VI. The Magistrate* indorsing a warrant in pursuance of the provisions of Section V. of this Act shall not be liable to any action or other proceeding in consequence of any illegality in the issuing of the warrant; but any Magistrate* illegally or improperly issuing the same shall be liable for an arrest in pursuance of the indorsement, in the same manner and to the same extent only as if the warrant had been executed within his own Jurisdiction.

VII. Upon the apprehension of the supposed offender, if the offence be alleged to have been committed in any part of the territories under the Government of the East India Company, he shall be carried before the Magistrate* within whose Jurisdiction the offence shall be alleged to have been

* For the definition of the term "Magistrate" see Section 25.

committed, and shall be by him dealt with according to law, unless by the warrant the Officer be authorized to take bail or security, and such bail or security be given for the appearance of the person accused before the Magistrate* or Justice of the Peace of the zillah or district in which the offence shall be alleged to have been committed. If the offence be charged to have been committed in any place not within the territories under the Government of the East India Company, the person arrested shall be forthwith carried before a Magistrate* or Justice of the Peace of the zillah or district in which he shall be arrested. The Magistrate* or Justice of the Peace, before whom the supposed offender shall be carried in pursuance of the last mentioned directions, may proceed in the same manner as in cases in which he has power to commit for trial, or to hold to bail for an offence committed within his own Jurisdiction. If, after making as full an inquiry into all the circumstances of the case as the evidence obtainable by the Magistrate* or Justice of the Peace within the territories under the Government of the East India Company will enable him to make, the evidence adduced shall be sufficient in his judgment to warrant a committal, he shall commit the accused to some place of confinement within his zillah or district, which in the judgment of the Magistrate* or Justice of the Peace shall be fit for receiving the prisoner, or if there be no such place, to the gaol of the Presidency, there to remain until he shall be delivered up or discharged by orders of Government; if after making such inquiry the circumstances shall not, in the judgment of the Magistrate* or Justice of the Peace, be sufficient to warrant either the committal or the holding to bail of the prisoner, he shall be discharged.

VIII. If the offence charged be one committed out of the British territories in India, which if committed within the Jurisdiction of the Magistrate would be bailable, the Magistrate* or Justice of the Peace may proceed accordingly, and may discharge the prisoner upon his giving the necessary bail. The recognizance or bail-bond in such case shall be for the appearance of the accused before the Magistrate* or Justice of the Peace for the time being of the zillah or district in which the recognizance shall be taken, on a certain day to be named therein, allowing reasonable time for receiving the orders of Government, and on such subsequent days as the Magistrate* or Justice of the Peace for the time being shall from time to time appoint.

IX. If any person shall in pursuance of this Act be carried before a Magistrate* or Justice of the Peace other than the one who issued the warrant, or a Magistrate* or Justice of the Peace for the time being of the same zillah or district, the depositions and documents upon which the warrant was issued, or copies thereof, to be certified under the hand and seal of the Magistrate* or Justice of the Peace of the zillah or district in which the warrant was issued, shall, upon the requisition of the Magistrate* or Justice of the Peace before whom such person shall be carried, be forwarded to such Magistrate* or Justice of the Peace; and if the warrant be issued under an order of Government, and executed in a Presidency or place not under the Government issuing the order, notice of the arrest shall be forthwith communicated to such Government, who shall forward the requisition and any documents relating thereto in their possession to the Government having jurisdiction over the place of arrest, and such last-mentioned Government shall have the same powers as the Government who made the order.

X. If the person accused of the offence mentioned in any such order of Government be proved to have been convicted and sentenced for the offence charged by a Court of Justice in any part of Her Majesty's dominions in

* For the definition of the term "Magistrate" see Section 25.

which the offence is alleged to have been committed, and to have escaped before such sentence was carried into execution; the Magistrate* or Justice of the Peace, upon proof of such conviction and sentence, may issue a warrant for the apprehension of the person accused, and he may be arrested and committed in manner aforesaid without further proof, unless such person shall prove that the conviction or sentence has been reversed or annulled.

XI. If it appear to the Magistrate* or Justice of the Peace, before whom any prisoner shall be carried under this Act for an offence alleged to have been committed in any territories not under the Government of the East India Company, that particular circumstances exist which render it advisable that the case should be investigated by the Magistrate* or Justice of the Peace of a zillah or district nearer to such territories, he shall forthwith report the case and the particular circumstances to the Government, who shall either order such Magistrate* or Justice of the Peace to proceed with the case himself, or to send the case to be investigated by the Magistrate* or Justice of the Peace of any other district to be named by the Government. In the latter case the prisoner shall be sent, or if the offence be bailable, shall give bail to appear before such last-mentioned Magistrate* or Justice of the Peace, who shall have power to deal with the case as if he had issued the warrant under which the prisoner shall be arrested, and all the depositions and documents shall be forwarded to such Magistrate* or Justice of the Peace. The order of Government shall be a sufficient justification for all persons acting in pursuance thereof.

XII. The Government by whom any order under Section I. of this Act shall be made, may, if they think fit so to do, direct that copies of any depositions or exhibits which shall have been laid before them and shall have been certified to their satisfaction to be true copies of depositions or exhibits made or produced before a competent judicial Officer of the territories in which the offence is alleged to have been committed, may be received in evidence of the criminality of the person accused, and such direction shall be sufficient authority for receiving the same in evidence.

XIII. The Magistrate* or Justice of the Peace, after committing the accused or holding him to bail as aforesaid, for any offence committed out of the territories under the Government of the East India Company, shall forthwith report the result of his proceedings to the Government to which he is subordinate, together with any remarks which he may deem necessary or proper to make upon the whole case. He shall also forward with such report a copy of all depositions and documents used before him.

XIV. Upon receipt of the report, and after examining the case, the Government may, by order in writing to be signed by the Secretary to the Government, order the accused either to be discharged or to be held to bail to appear in such Court or place and at such time or times as the Government may think fit, or to be delivered up to some person authorized by the Government or Officer making the requisition to receive and take charge of him. In cases falling within the provisions of Act I. of 1849, the Government may order the person accused to be tried under that Act.

XV. If ordered to be delivered up, the person to whom the accused shall be ordered to be delivered, shall not have the custody or charge of him so long as he shall remain in any part of the territories under the Government of the East India Company, but the accused shall be conveyed in custody through such last-mentioned territories towards the territories in which the offence shall be alleged to have been committed, in the same manner as a

* For the definition of the term "Magistrate" see Section 25.

prisoner sent from the station of one district to that of another, and as soon as he shall have been conveyed to the frontiers of the territories under the Government of the East India Company, he shall be delivered over to some person authorized by the Government making the requisition to receive and take charge of him. If no such person shall attend to receive the prisoner, the latter shall be taken before the nearest Magistrate, who may order him to be discharged out of custody, and may provide him with such means of returning to the place where he was apprehended or so near thereto as he may desire, as such Magistrate* may think necessary and suitable to his station.

XVI. Any Magistrate* or Justice of the Peace acting under the provisions of this Act shall issue all necessary warrants, orders and directions for carrying this Act, and also any order made under it by the Government, into effect, under his signature and seal, or seal of office, if he shall have a seal of office, and all Magistrates and Officers acting in pursuance of this Act shall have and exercise the same powers as if the offence charged had been committed within the zillah or district subject to their jurisdiction; and in cases where the accused may have been held to bail, the Magistrate* may order the bail-bond to be renewed in such form as may be necessary to carry any order of Government into effect, and if such bail-bond shall not be renewed accordingly, may commit the person accused to prison for such period as may be necessary to carry such order into effect.

XVII. In case any person arrested under this Act shall escape out of custody, he may be re-taken in any part of the territories under the Government of the East India Company, in the same manner as if he had escaped from custody under process for an offence committed in that part of such territories in which he shall be found.

XVIII. If a warrant be issued in any part of Her Majesty's dominions not under the Government of the East India Company, for the arrest of any person for any heinous† offence alleged to have been committed therein, or for the arrest of any person for any heinous† offence of which he may have been convicted by a Court of competent jurisdiction, in any such part of Her Majesty's dominions, any Magistrate* or Justice of the Peace within the territories under the Government of the East India Company, may upon the production of such warrant and proof of the signature of the Officer signing it, and of his authority to issue the same, and without any further proof and without any order of Government, issue his warrant for the apprehension of the person accused, and after his apprehension may proceed to commit or hold him to bail in manner aforesaid, and to take such other proceedings as aforesaid as the case may require, but the person accused shall not be delivered over as aforesaid without an order of Government. The Government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of Government issued under this Act.

XIX. In cases in which the immediate apprehension within the British territories in India of any person accused of having committed any heinous offence mentioned in Section XXI. of this Act out of such territories shall, in the judgment of a Magistrate* or Justice of the Peace having jurisdiction in any part of such territories in which the person accused shall be found, be necessary for the ends of justice, the person accused may without an order of Government be apprehended or proceeded against in the same manner as for an offence charged to have been committed in the place where the person accused shall be found, and after his apprehension, he may be committed or

* For the definition of the term "Magistrate" see Section 25.

† Defined in Sections 21, 22.

held to bail in manner aforesaid, and such other proceedings as aforesaid may be taken as the case may require, but the person accused shall not be delivered up without an order of Government. The Government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of Government issued under this Act.

XX. If any person imprisoned under this Act shall not either be delivered up or discharged or brought to trial within two calendar months after his committal, it shall be lawful for the principal court of original jurisdiction in criminal cases in the district in which he shall be imprisoned, upon application by or on behalf of the prisoner, to order him to be discharged out of custody, either upon giving such bail as the Court may order, or without bail, unless sufficient cause shall be shown to the Court why such discharge ought not to be ordered. Provided that no such order shall be made until after notice of the application, or of the intention to make the same, shall have been given to Government or to the Secretary or one of the Secretaries thereof.

XXI. The words "heinous offence" in this Act shall be deemed to include treason against Her Majesty committed in any part of Her Majesty's dominions, murder, attempting to murder, rape, great personal violence, maiming, dacoity, thuggee, robbery, burglary, knowingly receiving property obtained by dacoity, robbery or burglary, cattle-stealing, breaking and entering a dwelling-house and stealing therein, arson, setting fire to a village, house, or town, forgery or uttering forged documents, counterfeiting current coin, knowingly uttering base or counterfeit coin, perjury, subornation of perjury, embezzlement whether by public Officers or other persons, and being an accessory to any of the above-mentioned offences.

XXII. The said words "heinous offence" in this Act shall also be deemed to include any offence for which by any treaty in force between Her Majesty or the East India Company, and any Foreign Prince or State, Her Majesty or the East India Company shall, at the time of making any requisition as aforesaid, be bound to deliver up offenders to the Foreign Prince or State making the same, and any other offence which in the judgment of the Government to whom the requisition shall be made, shall be serious or aggravated, and for which the person accused cannot be tried within the territories under the Government of the East India Company under the provisions of Act No. I. 1849.

XXIII. If by any such treaty Her Majesty or the East India Company shall be bound to deliver up to any Foreign Prince or State any person liable to be proceeded against by the laws of such Foreign Prince or State, in any case not expressly provided for by this Act, or in any manner other than that provided by this Act, it shall be lawful for the Government of any part of the territories under the Government of the East India Company, in which such person may be found, upon requisition made by or on the part of such Foreign Prince or State, to adopt such proceedings for carrying such treaty into effect, and for the surrender of such person, and for making any preliminary inquiry into the charge contained in the requisition, as it shall think fit, and any such order of the Government in writing, under the hand of one of the Secretaries of such Government, shall be a sufficient authority and justification for all acts to be done in execution thereof.

XXIV. Sections 5, 6 and 7, Regulation XI. of 1827, of the Bombay Code, are repealed.

XXV. Unless where a contrary intention appears from the context, the word "Government," as used in this Act, shall be deemed to mean and

include the Governor General of India in Council, or the person or persons administering the Executive Government in any Presidency or place within the British territories in India. The words "British territories in India" shall include any part of the territories under the Government of the East India Company. The word "Magistrate," as used in this Act, is intended to include a Joint Magistrate, or any person lawfully exercising the powers of a Magistrate, and also a Justice of the Peace. Words in the singular number are intended to include the plural, and words in the masculine gender to include the feminine.

APPENDIX D.

LAWS AND RULES RELATING TO POLICE.

ACT No. V. OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 22nd March, 1861.)

An Act for the Regulation of Police.

Preamble.

WHEREAS it is expedient to re-organize the Police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpretation.

I. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

"Magistrate of the District."

The words "Magistrate of the District" shall mean the Chief Officer charged with the executive administration of a District and exercising the powers of a Magistrate, by whatever designation the Chief Officer charged with such executive administration is styled.

"Magistrate."

The word "Magistrate" shall include all persons within the General Police District, exercising all or any of the powers of a Magistrate.

"Police."

The word "Police" shall include all persons who shall be enrolled under this Act.

"General Police District."

The words "General Police District" shall embrace any Presidency, Province, or place, or any part of any Presidency, Province, or place in which this Act shall be ordered to take effect.

"Property."

The word "Property" shall include any moveable property, money, or valuable security.

Number.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Gender.

Words importing the masculine gender shall include females.

"Person."

The word "person" shall include a Company or Corporation.

"Month"

The word "month" shall mean a calendar month.

"Cattle.

The word "cattle" shall, besides horned cattle, include Elephants, Camels, Horses, Asses, Mules, Sheep, Goats, and Swine.

Constitution of the Force

II. The entire Police* establishment under a Local Government shall, for the purposes of this Act, be deemed to be one Police Force, and shall be formally enrolled; and shall consist of such number of Officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the Local Government, subject to the sanction of the Governor-General of India in Council.

Superintendence in the Local Government.

III. The superintendence of the Police* throughout a General Police District* shall vest in and, subject to the general control of the Governor-General of India in Council, shall be exercised by the Local Government to which such District is subordinate; and except as authorized under the provisions of this Act, no person, Officer, or Court shall be empowered by the Local Government to appoint, supersede, or control any Police Functionary.

Inspector General of Police, &c.

IV. The administration of the Police* throughout a General Police District* shall be vested in an Officer to be styled the Inspector General of Police, and in such Deputy Inspectors General, and Assistant Inspectors General, as to the Local Government shall seem fit. The administration of the Police throughout the local jurisdiction of the Magistrate of the District* shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary. The Inspector General and other Officers abovementioned shall from time to time be appointed by the Local Government, and may be removed by the same authority.

Inspector General to have powers of a Magistrate.

To exercise them under the orders of Government

V. The Inspector General of Police shall have the full powers of a Magistrate throughout the General Police District;* but shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.

Deputy Inspectors General &c. may be vested with powers of a Magistrate.

In what cases those powers shall be exercised.

VI. The Local Government may vest any Deputy Inspector General, Assistant Inspector General, District Superintendent, or Assistant District Superintendent of Police with all or any of the powers of a Magistrate within such limits as it may deem proper; but such Officers respectively shall exercise the powers with which they shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension and detention of offenders in order to their being brought before a Magistrate, and, so far as may be necessary, for the performance of the duties assigned to them by this Act.

Inspector General &c. to appoint and dismiss.

VII. The appointment of all Police Officers other than those mentioned in Section IV of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector General, Deputy Inspectors General, Assistant

* See Definition in Section 1.

Inspectors General, and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend, or reduce any Police Officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same, or fine any Police Officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner or who by any act of his own shall render himself unfit for the discharge thereof.

Police Officers to receive certificates of Office.

VIII. Every Police Officer, so appointed, shall receive on his appointment a certificate in the form annexed to this Act, under the seal of the Inspector General or such other Officer as the Inspector General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a Police Officer. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the Police Force, and shall be immediately surrendered to the Superior Officer of such person or to some other Officer empowered to receive the same.

Police Officers not to resign without leave or two months' notice

IX. No Police Officer shall be at liberty to withdraw himself from the duties of his office unless expressly allowed to do so by the District Superintendent or by some other Officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his Superior Officer notice in writing, for a period of not less than two months, of his intention to resign.

Police Officers not to engage in other employment.

X. No Police Officer shall engage in any employment or Office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector General.

Police Superannuation Fund.

XI. There shall be deducted from the pay of every Police Officer of a Class not entitled to the benefit of the Uncovenanted Service Pension Rules, a sum after such rate as the Local Government shall direct, not being a greater rate than one anna in the Rupee. The sum so deducted, together with the amount of any saving from the stoppages from the pay of Police Officers during absence from sickness or other cause, and of fines imposed on Police Officers for misconduct and by Magistrates upon drunken persons, or for assaults upon Police Officers, and any money arising from the sale of worn or cast-off clothing or other articles supplied for the use of the Police, or from any other source which shall be authorized by the Local Government, shall, from time to time, be invested in such manner and in such securities as the Local Government may direct, and the interest and dividends thereof, or so much of the same as shall not be required for the purposes herein mentioned, shall be likewise invested as aforesaid, and accumulate, so as to form a Fund to be called "The Police Superannuation Fund," and shall be applied from time to time to the payment of superannuation or retiring allowances or gratuities, under such rules as may be passed by such Local Government. Provided that any Police Officer may be dismissed or removed without a superannuation allowance, and that no Police Officer shall be entitled as of right to any allowance from the said Fund, or shall retain any right to a refund of any deduction made from his pay while he shall have been a Police Officer.

Proviso.

Inspector General to make Rules.

XII. The Inspector General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and rules as he shall deem expedient, relative to the organization, classification, and distribution of the Police Force,* the places at which the Members of the Force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the Police Force as the Inspector General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such Force efficient in the discharge of its duties.

Additional Police Officers employed at the cost of individuals.

XIII. It shall be lawful for the Inspector General of Police, or any Deputy Inspector General, or Assistant Inspector General, or for the District Superintendent, subject to the general direction of the Magistrate of the District,* on the application of any person showing the necessity thereof, to depute any additional number of Police Officers to keep the peace at any place within the General Police District,* and for such time as shall be deemed proper. Such Force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application. Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector General, Deputy Inspector General, or Assistant Inspector General or to the District Superintendent, to require that the Police Officers so deputed shall be withdrawn, and such person shall be relieved from the charge of such additional Force from the expiration of such notice.

Appointment of additional Force in the neighbourhood of Railway and other works.

XIV. Whenever any Railway, Canal, or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector General that the employment of an additional Police Force* in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour of the persons* employed upon such work, manufactory, or concern, it shall be lawful for the Inspector General, with the consent of the Local Government, to depute such additional Force to such place, and to employ the same so long as such necessity shall continue, and to make orders from time to time upon the person having the control or custody of the Funds used in carrying on such work, manufactory, or concern, for the payment of the extra Force so rendered necessary, and such person* shall thereupon cause payment to be made accordingly.

Quartering of additional Police in disturbed or dangerous Districts

XV. It shall be lawful for the Inspector General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any Police Force* in excess of the ordinary fixed complement, to be quartered in any part of the General Police District* which shall be found to be in a disturbed or dangerous state, or in any part of the General Police District* in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of Police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional Police Force,* and the Magistrate of the District,* after enquiry if necessary,

* See Definition in Section I.

shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.

Payment of money for support of additional Police Force.

XVI. All monies payable under the last three preceding Sections, on account of any additional Police Force employed as therein directed, shall be recoverable under the warrant of a Magistrate* by distress and sale of the goods of the defaulter within the District of such Magistrate, or by suit in any competent Court; and the monies paid on this account or so recovered shall be credited to a Fund to be called "The General Police Fund," and shall be applied to the maintenance of the Police Force* under such orders as the Local Government shall pass.

Special Police Officers.

XVII. When it shall appear that any unlawful assembly† or riot‡ or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police Force* ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police Officer may require, to act as Special Police Officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of Special Police Officers.

XVIII. Every Special Police Officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary Officers of Police.

Refusal to serve as Special Police Officers.

XIX. If any person being appointed a Special Police Officer as aforesaid shall, without sufficient excuse, neglect, or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate,* to a fine not exceeding fifty Rupees for every such neglect, refusal, or disobedience.

Authority to be exercised by Police Officers.

XX. Police Officers, enrolled under this Act, shall not exercise any authority, except the authority provided for a Police Officer under this Act and any Act which shall hereafter be passed for regulating Criminal Procedure.§

Village Police Officers.

XXI. Nothing in this Act shall affect any Hereditary or other Village Police Officer, unless such officer shall be enrolled as a Police Officer under this Act. When so enrolled, such Officer shall be bound by the provisions of the last preceding Section. No Hereditary or other Village Police Officer shall be enrolled without his consent and the consent of those who have the right of nomination. If any Police Officer appointed under Act XX of 1856 *(to make better provision for the appointment and maintenance of Police Chowkeedars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal)* is employed out of the District for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that District.

* See Definition in Section 1. † Defined in Section 141 of the Indian Penal Code
‡ Defined in Section 146 of the Indian Penal Code. § That is Act XXV. of 1861

Police Officers to be considered always on duty and may be employed in any part of the General Police District.

XXII. Every Police Officer* shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a Police Officer in any part of the General Police District.*

Duties of Police Officers.

XXIII. It shall be the duty of every Police Officer* promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances;† to detect and bring offenders to justice; and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists: and it shall be lawful for every Police Officer, for any of the purposes mentioned in this Section, without a warrant, to enter and inspect any drinking shop, gaming house, or other place of resort of loose and disorderly characters.

Police Officer may lay informations, &c.

XXIV. It shall be lawful for any Police Officer* to lay any information before a Magistrate,* and to apply for a summons,‡ warrant,§ search warrant,‖ or such other legal process as may by law issue against any person committing an offence, and to prosecute such person up to final judgment.

Police Officers to take charge of unclaimed property, and to be subject to Magistrate's orders as to the disposal of it.

XXV. It shall be the duty of exery Police Officer* to take charge of all unclaimed property,* and to furnish an inventory thereof to the Magistrate of the District.* The Police Officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the District.*

Magistrate may detain property and issue proclamation.

XXVI. The Magistrate of the District* may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

Confiscation of property if no claimant appear.

XXVII. If no person shall within the period allowed claim such property, it may be sold under the orders of the Magistrate of the District* and the proceeds shall be at the disposal of Government.

Persons refusing to deliver up certificate &c. on ceasing to be Police Officers.

XXVIII. Every person, having ceased to be an enrolled Police Officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments, and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate,* to a penalty not exceeding two hundred Rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

Penalties for neglect of duty, &c.

XXIX. Every Police Officer* who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent Authority; or who shall withdraw from the duties of his Office without permission, or without having given previous notice for the period of two months; or who shall engage without authority in any employment other than his Police duty; or who shall be guilty of cowardice, or who shall offer any unwarrantable per-

* See Definition in Section 1. † Defined in Section 268 of the Indian Penal Code.
‡ See Section 164 *et seq.* of the Code of Criminal Procedure.
§ See Section 176 *et seq.* of the Code of Criminal Procedure.
‖ See Section 114 *et seq.* of the Code of Criminal Procedure.

sonal violence to any person in his custody, shall be liable, on conviction before a Magistrate,* to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

Regulation of public processions, &c.

XXX. The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets, or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass. They may also regulate the use of music in the streets on the occasion of festivals and ceremonies.

Police to keep order in public roads, &c.

XXXI. It shall be the duty of the Police to keep order on the public roads, and in the public streets, thoroughfares, ghauts, and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghaut, or landing place may be thronged or may be liable to be obstructed.

Penalty for disobeying orders issued under last two Sections, &c.

XXXII. Every person opposing, or not obeying the orders issued under the last two preceding Sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate,* to a fine not exceeding two hundred Rupees.

Control of the Magistrate of the District under last three Sections.

XXXIII. Nothing in the last three preceding Sections shall be deemed to interfere with the general control of the Magistrate of the District* over the matters referred to therein.

Certain duties of Police Officers.

Obstructions and nuisances in roads.

XXXIV. Any person who, on any road or in any street or thoroughfare within the limits of any Town to which this Section shall be specially extended by the Local Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a Magistrate,* be liable to a fine not exceeding fifty Rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer* to take into custody, without a warrant, any person who within his view commits any of such offences, namely:—

Slaughtering cattle, furious riding, &c.

First. Any person who slaughters any cattle* or cleans any carcass; any person who rides or drives any cattle* recklessly or furiously, or trains or breaks any horse or other cattle.

Cruelty to animals.

Second. Any person who wantonly or cruelly beats, abuses, or tortures any animal.

Obstructing passengers.

Third. Any person who keeps any cattle* or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

Exposing goods for sale on roads.

Fourth. Any person who exposes any goods for sale.

* See Definition in Section I.

Fifth. Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like, or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

Throwing dirt into street.

Sixth. Any person who is found drunk or riotous, or who is incapable of taking care of himself.

Being found drunk in any thoroughfare.

Seventh. Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Indecent exposure of person.

Eighth. Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure.

Neglect to protect dangerous places.

XXXV. In all cases of convictions under this Act, the Officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict; provided that any charge against a Police Officer above the rank of a Constable under this Act shall be enquired into and determined only by an Officer exercising the powers of a Magistrate.*

Jurisdiction.

Proviso.

XXXVI. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act. Provided that no person shall be punished twice for the same offence.

Power to prosecute not affected.

Proviso.

XXXVII. All forfeitures or penalties imposed under the authority of this Act for offences punishable by a Magistrate* may, in case of non-payment thereof, be levied by distress and sale of the property* of the offender within the limits of the jurisdiction of the Magistrate of the District,* by warrant under the hand of the Magistrate who made the order.

Levy of forfeiture and penalties by distress.

XXXVIII. In case any such forfeiture or penalty shall not be forthwith paid, the Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security, to the satisfaction of the Magistrate, for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Procedure until return is made to warrant of distress.

XXXIX. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the Magistrate by the confession of the offender or otherwise, that he has not sufficient property whereupon such fine or sum of money could be levied if a warrant of distress were issued, the Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of the Magistrate, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in

Imprisonment if distress not sufficient.

* See Definition in Section 1.

any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Levy of fines from European British subjects.

XL. If the offender be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Rewards to Police and informers payable to General Police Fund.

XLI. All sums paid for the service of process by Police Officers, and all rewards, forfeitures, and penalties or shares of rewards, forfeitures, and penalties which by law are payable to informers, shall, when the information is laid by a Police Officer, be paid into the General Police Fund.

Limitation of action.

XLII. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general Police powers hereby given, shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action. No plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held, shall certify his approbation of the action. Provided always that no action shall in any case lie where such Officers shall have been prosecuted criminally for the same act.

Tender of amends.

Proviso.

Plea that act was done under a warrant.

XLIII. When any action or prosecution shall be brought or any proceedings held against any Police Officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate, and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine. Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this Section.

Proviso.

Police Officers to keep a Diary.

XLIV. It shall be the duty of every Officer in charge of a Police Station to keep a General Diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been

examined. The Magistrate of the District* shall be at liberty to call for and inspect such Diary.

Local Government empowered to prescribe the form of Returns.

XLV. The Local Government may direct the submission of such Returns by the Inspector General and other Police Officers as to such Local Government shall seem proper, and may prescribe the form in which such Returns shall be made.

Scope of Act.

XLVI. This Act shall not take effect in any Presidency, Province, or place, unless the same shall be extended, to such Presidency, Province, or place by the Governor-General of India in Council by an order to be published in the Government Gazette. When the Act shall have been so extended, it shall be carried into effect in such Presidency, Province, or place as the Local Government, by an order to be published in the Official Gazette, shall direct.

Authority of District Superintendent of Police over Village Police.

XLVII. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the District* over any Village Watchman or other Village Police Officer for the purposes of Police, shall be exercised, subject to the general control of the Magistrate of the District,* by the District Superintendent of Police.

FORM *(See Section VIII.)*

A. B. has been appointed a Member of the Police Force, under Act V. of 1861, and is vested with the powers, functions, and privileges of a Police Officer.

The following Rules were recently issued by the Inspector General of Police, Bengal, with the sanction of that Government.

FIRST INFORMATION REPORT.

I. Section 139 of the Criminal Procedure clearly directs that "every complaint of information preferred to an Officer in charge of a Police Station shall be reduced into writing," and this is quite independent of the after order directing the substance of the complaint to be entered in the Diary. The Form given in Appendix No. I. is to be used in future in all Districts.

II. One copy of the form will be sent to the District Superintendent, another copy to the Officer in charge of the sub-district. By these Officers they will be submitted to the Magistrate of the District, and the Magistrate having jurisdiction respectively, who will return them after seeing them. One of the copies will again be sent to the Magistrate trying the case, with the final report, and will be filed with the papers of the case. The other copy will be filed in the Superintendent's office.

III. When the Magistrate of the District or the Magistrate in charge of a sub-District is absent from his Head Quarters or Sudder Station, this report will be sent to him by the District Superintendent or Officer in charge of sub-District through the Police Officer of highest rank in attendance at the Court of such Magistrate.

IV. Every *cognizable* case reported to the Police, no matter whether it afterwards turns out a false charge or not, whether it be a heinous offence or a petty one, is to be reported in the above form. If a Magistrate directs a *cognizable* case to be investigated by the Police, and the Police Officer has not received any previous information regarding the crime, and has not already sent in these forms, he shall on receipt of the Magistrate's order do so.

* See Definition in Section 1.

V. The first part of the form is to be filled in by the Officer in charge of the Police Station, and the second part should be *verbatim* the report brought to the Police Station.

VI. These reports should be numbered consecutively in each Police Station monthly. The first report received at the Police Station (no matter when the crime occurred;) after 12* o'clock on the morning of the first day of the month, should be number 1, and the last report received, before 12* o'clock on the night of the last day of the month, the last number. Great care should be taken in filling in the date and hour in the first column.

VII. In the second column should be entered not only the name of the person who actually brings the information to the Police, but names of other parties concerned, such as 'Chowkeedar A. B. sent by C. D. Gomashta, of E——poor village to report a dacoity in the house of F. G ;" or when the investigation is ordered by a Magistrate, the entry should be "Deputy Magistrate A. B., on the petition of C. D., regarding the illegal confinement of E. F."

VIII. In the third column, a short history of the case, as reported by the informant, should be entered. The Police Officer receiving the charge should enter the Section under which he receives the charge, that is to say, under which he proceeds to make the enquiry; it will very often happen that after enquiry, the case will be proved to be very different to that reported; Police Officers should not be blamed for these discrepancies.

IX. Special pains should be taken to impress on Police Officers in charge of Stations that in every case in which property has been stolen, the amount stolen should be mentioned; of course, it will very often happen that the informant is not possessed of this information, in such cases the entry should be "informant does not know the amount of property stolen" or "informant says *about* —— Rupees' worth of property has been stolen." In all such cases, in the first Special Diary of the case that is sent, the exact amount of property said to have been stolen, should be entered.

X. The date of occurrence should always, if possible, be ascertained and given; the informant may not be able to give this information, in such cases it should be given in the Special Diary, or if it is impossible to give the exact date, an approximate date should be given, thus—"Deceased was for the last time seen alive on the 5th, and his body was not found till the 8th;" or, "the complainant left his home on the 10th, and on his return, on the 13th, found he had been robbed."

XI. The place of occurrence of the crime should be clearly given, to enable the district Superintendent, or the Magistrate having jurisdiction, if it is necessary for them to do so, to proceed to the spot at once.

XII. In the last column should merely be given the name and designation of the Officers sent to investigate, and any other important steps taken *before* proceeding to investigate, such as, "information sent to the neighbouring Stations of A., B. and C."

XIII. The first part should always be signed by the Officer in charge of the Station at the time of the receipt of the information, no matter what his rank may be.

XIV. The second part should be *verbatim* the story told by the informant. If the complaint is given in writing, the original paper should be attached to the form and the second part not written. This part should always be signed by the person giving the information.

* Midnight is apparently meant in both instances [Ed.]

XV. When information is received regarding the commission of any of the following seven descriptions of crimes, these reports should be sent at once and by the quickest possible means of conveyance, and not kept till the regular dâk is despatched :—

1.—Murder.

2.—Dacoity.

3.—Serious Affrays and Illegal Assemblies likely to lead to serious riots.

4.—Theft, Highway Robbery, House-breaking, &c., in which Rs. 300 or upwards is stolen.

5.—All cases in which Europeans are charged with any crime.

6.—All cases in which Police Officers are accused of heinous crimes.

7.—Counterfeiting Government Stamps or Coins.

XVI. The Form (No. 1,) should be kept at the Police Stations and not at the Out-posts ; information given at Out-posts should be communicated at once to the Officer in charge of the Police Station, and the report should be sent by him. All first informations must be signed by the Officer in charge of Police Stations.*

XVII. The number of persons supposed to be concerned in each case, and the number charged with the offence should always be given ; it is not necessary in this return to give all their names, it will be quite enough to say A. B., and so many others.

XVIII. The practice of cancelling reports should be avoided ; that is to say, if the first information of a crime is sent in a report, and half an hour after the despatch of the report it is found that the information was entirely false, the number should be left, and the next case reported in the next consecutive number.

XIX. Vague rumours of crime *said* to have been committed, should not be reported in this Form, but should be mentioned in the Station Diary ; as soon as any authentic information is collected, report No. 1 should be at once sent in.

CHARGE SHEET OF ACCUSED SENT UP FOR TRIAL—*Form A.*

I. Before giving any special directions as to how this Form should be filled up, it is necessary to show clearly how all cognizable cases are to be reported.

1*st.*—All cases in which the accused are sent up for trial, and all cases in which the accused have absconded and the case is substantiated against them, are to be reported in Form A.

2*nd.*—All cases in which the accused are not sent up for trial before a Magistrate, whether they have been arrested and released on bail or recognizance by the Police, or whether no arrest has taken place, and whether the crime is ascertained to have been committed or not, are to be reported in Form B.

3*rd.*—All cases in which no one is accused and the Police fail to obtain any clue, whether the crime is ascertained to have been committed or not, are to be reported in Form C.

* District Superintendents can use their discretion in permitting this form to be kept and used at any Police Out-post when, from distance from the Sub-Divisional Station or other cause, such a course may be considered advisable.

II. Except in cases not cognizable by the Police, a Police Officer in charge of a Station must send the final report of every charge made to him against any particular person in either Form A. or B., and those in which no one is accused in Form C.

III. The charges which should be entered then in Form A are:—

Firstly.—All cases cognizable by the Police in which particular persons have been charged, in which arrests have been made, and the accused sent before a Magistrate.

Secondly.—All such cases which the Police believe to be true, and in which the offenders have evaded arrest or absconded after arrest.

IV. It will often happen that on a serious charge being made to a Police Officer, he immediately arrests the accused, but subsequently discovers that there is no foundation for the complaint, or that it is so much exaggerated, that the offence which has been really committed proves not cognizable, and he releases the accused on bail. This charge, though false, or exaggerated, must be entered in Form B., because the charge has not been proved against the accused.

V. It need scarcely be added that Police Officers should be instructed, that frequent instances of such hasty and unnecessary arrests will seriously affect their reputation, and, indeed, the character of the general Police Force of a district. The efficiency or inefficiency of the Police Force, in this respect, will be clearly shewn in the new Monthly Return of Crimes, where, if the Police have been acting without judgment and due care, the number of persons arrested will contrast unfavourably with the number of persons convicted.

VI. A Police Officer may, however, consider a charge against a person named well founded, and yet not make a arrest.

VII. By Section 137 of Act XXV. of 1861, a discretionary power is given in this respect. According to that Section, if a Police Officer shall not consider the immediate apprehension of the accused necessary for the ends of justice, he shall abstain from proceeding in the case, and report the substance of the complaint or information and ask for orders, and act accordingly. But the case must finally be reported in A., B., or C. Form, according to circumstances.

VIII. The fact that the accused, from his position or standing, is not likely to attempt to escape, is one of the circumstances which will lead a Police Officer to think that his immediate apprehension is not necessary for the ends of justice.

IX. Another is, that the offence is not likely to be immediately repeated, or to lead to any other offence being committed.

X. For instance, a wealthy Zemindar may be accused of having harboured an offender charged with an offence punishable with any term of imprisonment over 1 and under 10 years. Here, though the Police Officer may consider the charge proved, and though he has the power to arrest, he may not consider the immediate apprehension of the accused necessary. He reports the substance of such charge for the information of his superior Officer, and it will depend entirely on the orders of the superior Officer what action he takes afterwards, and in what Form his final report will be sent in.

XI. Section 136 merely does away with the necessity for a *local* enquiry in certain cases. Section 135 lays down a general rule that, upon complaint or information of a cognizable offence, a Police Officer shall *proceed to the spot* (where the offence occurred) and there hold an enquiry. But when a complaint is not of a serious nature, and is made against a person by

name, there may be no occasion for a local enquiry. The accused is known, and the witnesses are known. The Police Officer may, therefore, summon the witnesses to the Station-house and there hold his enquiry. If he still finds that a local enquiry is not necessary, he issues his order for the arrest of the accused, (supposing the offence to be proved), and sends him up for trial there and then. In short, Section 136 authorizes an enquiry at a Station-house, and does not give authority to reject a charge.

XII. The Section under which the Police Officer exercises this discretionary power should be entered in the last column of the "first information" report, or in the Special Diary, according to circumstances.

XIII. There are many cases preferred at Police Stations in which charges which are not cognizable by the Police, are so interwoven with charges that are cognizable, that nothing less than a judicial enquiry can satisfactorily determine which part is true and which part is false. If, however, the Police Officer who makes the enquiry, considers that part of the charge which is cognizable well founded, he should send the accused up for trial and report it in A. Form. But on the other hand, if he considers the cognizable part of the charge as not proved, and the non-cognizable part as proved, he will refrain from arresting the accused and report the case in B. Form.

XIV. For instance, if a charge of Highway Robbery is made against a person, and on investigation it is proved that an assault was committed, and there be no proof of the Robbery, the case will be reported in Form B., as the cognizable case which the Police Officer went to investigate is false; with regard to the assault, either the Magistrate may, if he think proper, summon the accused, or the aggrieved person can make his complaint before a Magistrate.

XV. As regards the proper manner of filling up Form A., the following instructions are issued. In column No. 1, must be entered the number of the charge.

XVI. Charges should be numbered with reference to the order in which they have been made during the year, that is, the first charge accepted in any year should be entered as No. 1, and so on consecutively, until the entry of the last charge accepted during that year which closes the series.

XVII. The first accepted charge of the next year again commences, No. 1; care of course must be taken that the same number entered in that portion of the Form which is sent to the Magistrate, is also noted in the counterfoil of the Form retained at the Police Station.

XVIII. The importance of numbering cases carefully will be apparent, when it is considered that it is by the number any case will be afterwards identified in any other form. As for instance, in a case of Theft or Burglary, a charge marked No. 1 A. Form, will be entered No. 1 in Register of Property Stolen and Recovered.

XIX. Or, if the offenders accused in Form A., No. 2, have absconded before the Police could apprehend them, or have escaped after sentence, then the case would be entered in Form V., Register of Absconded Criminals and Escaped Offenders, as case No. 2.

XX. Any mistake, therefore, in the entry of the charge in the first instance in Form A., will lead to confusion in all the subsequent entries in other Forms.

XXI. In the second column should be entered the number of the first information of the case; the month should also be given as "No 1, of January" or "No. 7, of February."

XXII. In the third column of the Form should be entered the date and hour when the charge was first made at the Police Station, and the name of the person who made the charge. It must be clearly understood that it is the name of the person who first brings the charge to the notice of the Police, that should be entered here, and that such person need not necessarily be the Prosecutor, or in any way interested in the case. In many instances, the village Chowkeedar or the servant of the Zemindar is the informant.

XXIII. In column 4, the name, address, and occupation of the person making the charge is entered. The necessity of names of persons charging being fully and carefully given is too obvious to need remark.

XXIV. The same observation applies to the entry of address and occupation, as it is very often by these latter entries that persons of similar names can be distinguished from each other.

XXV. In column 5, the names of the witnesses and their address will be entered, that is to say, the names of the witnesses from whom recognizances have been taken to appear before the Magistrate, and not of all the witnesses examined by the Police during investigation.

XXVI. In many cases complainants mention the names of about 20 or 30 people as witnesses; it will be the duty of the Police Officer who forwards the charge to enquire into complainants statements as regards his witnesses, to make a distinction between those who have actually witnessed the offence or who in any way can give important testimony, and those who can give merely hearsay evidence. Police Officers very often bind over 6 or 7 witnesses to appear before the Magistrate and give evidence on a point where 2 or 3 would be amply sufficient, as regards, for instance, identification of stolen property or weapons found.

XXVII. In column 6, the charge is to be entered. This should be done clearly and fully, but without any needless reiteration, and the Section of the Penal Code under which the charge comes should be given. It will show that the Officer fully comprehends the exact nature of the charge preferred.

XXVIII. It must be clearly understood that the charge the Police Officer considers to have been established before him must be entered in this column; it will very often happen that the charge originally made by the complainant is not the same as that established before the Police. A case reported to the Police as a Dacoity may, on investigation, turn out one of House-breaking; the latter crime will be entered in this column.

XXIX. The hour at which accused was arrested, and the name of the Officer who made the arrest, will appear in column 7. Under Section 152, a Police Officer cannot under any circumstances detain an accused person longer than 24 hours. This limit of time, however, counts from the hour in which the accused was taken into custody by the Police, and has no reference to the time such accused person may have been in custody of others, as, for instance, in those cases where an offender has been arrested by the village Chowkeedar, or the injured person. Officers in charge of districts cannot exercise too close a supervision over Police Officers with regard to their strict adherence to Section 152.

XXX. If the offence reported in Form A., is one against property, and property of any kind has been found, the person on whom such property was found, with the name of the finder, should be distinctly specified in column 8. All these particulars may have an important influence on the ultimate issue of the case; any facts discovered at the outset in a case will naturally have great weight with the Magistrate, as they are less likely to be the result

of collusion of parties, or suborning of witnesses, than circumstances which may come to light afterwards.

XXXI. These remarks apply with equal force to entries in column 9, where the name and description of any weapon that may have been used should be clearly specified.

XXXII. In column 10, will be entered the names of all the persons charged by the complainant with having committed the offence.

XXXIII. In column 11, will be entered the names of the persons sent up for trial in custody of the Police; and in column 12, the names of persons who are released in bailable offences, and required to appear before a Magistrate.

XXXIV. In those cases where the Police release a person on bail, and in which they consider the charge well founded, it is necessary that a certain day should be mentioned for the accused's appearance before the Magistrate, under Section 157.

XXXV. In column 13, the signature of the officer who has taken the charge should be inserted or attached.

XXXVI. The two last columns are left blank, to be filled up by the Magistrate when the case is disposed off.

XXXVII. On the receipt of the memo. directed in Chapter No. of Part —to be furnished by Court Inspectors, the last two lines on the counterfoil should be written up.

XXXVIII. Police Officers must be careful not to give in Form A. reasons for accepting charges.

XXXIX. This Form (A.) should not be sent in until the *completion of the enquiry*, and should be transmitted by the readiest and quickest means of communication. It should be addressed to the Police Officer in charge of the Sudder Station, or Sub-district, or Officer acting on their behalf, and not to the Court Inspector, as it is believed has been the practice in some Districts.

XL. The Police Officer in charge should send these reports at once to the Court Inspector, who will lose no time in bringing the case to the notice of the Magistrate.

XLI. This Form, as well as Forms B. and C., will be kept in the Magistrate's Office with the records of the case, and will not be returned to District Superintendent or sub-District Officer.

NOTE.—A memo. to be sent by the Court Inspector or Sub-Inspector to the Officer in charge of the Police Station, informing him of the result of the trial, and forwarding copy of any remarks the Magistrate who tried the case may have made regarding the Police investigation.

FINAL REPORT OF CHARGES IN WHICH ACCUSED ARE NOT SENT UP FOR TRIAL—*Form B.*

I. In Form B. should be entered those charges which are cognizable by the Police, and in which some particular person is charged with having been concerned, but which the Officer to whom the charge is preferred does not consider true, or not sufficiently proved to warrant his sending the accused before a Magistrate, whether the accused has been arrested and released on bail or recognizance, or whether no arrest has taken place.

II. It is necessary to explain that offences reported at Police Stations that are not cognizable by the Police, are not entered in this Form. A charge may be so palpably false on the face of it, that a Police Officer may

consider himself justified in immediately rejecting it, in which case he enters it in Form B.

III. Or, after making enquiries into the charge, the Police Officer may come to the opinion that it is false; in this case also he enters it in Form B.

IV. Reference has already been made, in Chapter 2, to charges preferred to the Police, in which complaints that are cognizable are mixed up with complaints that are not.

V. If the Police Officer, to whom such charge is preferred, is of opinion that the cognizable part of such charge is not well founded, he should decline to act on it, and enter it in Form B.

VI. No very detailed directions are required concerning the manner in which this Form should be filled up. The instructions given regarding the filling in of the first four columns of Form A, apply equally to Form B. In column 5, the charges investigated by the Police should be entered fully and clearly. If it is an offence punishable by the Penal Code, the Section under which it is punishable should be mentioned; if not, the Special Act or Regulation.

VII. In column 6 will be entered the amount of property stolen in true cases, that is to say, the amount reported by complainant as having been stolen, and not the amount reported by the Police after enquiry to have been stolen, *unless such is specially* sanctioned by the Magistrate.

VIII. In column 7 will be entered the names of the accused who have not been arrested, and in 8 those who have been arrested and released on bail or recognizances. The total of these two will show the number charged.

IX. It must be noted that the difference between the bail and recognizance bonds, taken from persons released and reported in Form B., and those released and reported in Form A., is, that the former are to appear when called upon, and the latter on a fixed day. Police Officers must bear in mind that no person who has been apprehended shall be discharged except on bail or on his own recognizance, or under the special order of a Magistrate (see Section 160. C. P.), and that only a Magistrate can release a person from his engagement, whether such engagement be in the form of a bail or recognizance, Information on this point will be conveyed to Officers in charge of Police Stations by Court Inspectors, and it will be the duty of the former to enter the Magistrate's orders* on the counterfoil.

X. In column 10, the Officer who investigated the case will state clearly and concisely whether, in his opinion, the case is a true one or not, that is to say, whether the *crime* really occurred or not.

XI. The charge made against a person may be entirely false, yet the case true. A. and B., charged with the murder of C., may be perfectly innocent, yet the murder may have been committed.

XII. In the last column a statement of the charge should be given in full, in order to prevent the accumulation of papers; this statement should be continued on the back of the form, not on a separate sheet, unless absolutely necessary.

XIII. If the Police Officer has acted correctly in not sending the accused for trial, it will be both his interest and duty to give a full statement of all the circumstances connected with it, as it is from this statement the magisterial Officer will be enabled to judge whether he has acted properly or not.

XIV. In cases when the Police consider the charge unfounded and report it in Form B., but in which the Magistrate may consider that the Police

* See note to para. 37 of Chapter II.

have acted erroneously, that in fact the charge is well founded and should have been reported in Form A., he will in all probability order a fresh enquiry. The Police are bound to enter into such enquiry with as little delay as possible.

XV. If, on the completion of such enquiry, the Police Officer sees reasons to consider the charge well founded, he will report it in Form A. If not, he will simply report that he still considers the charge, after re-investigation, untrue. There is no necessity for sending a second report in Form B. If the Magistrate does not order any re-investigation, but directs the accused to be sent before him for trial, Form A. will be sent with the accused.

XVI. Whenever any page of the book containing Forms A. B. or C. is rendered unfit for use by careless writing, blots, mistakes or erasures, it should be sent into the District Superintendent, who will write the word "cancelled" across the page in red ink, and append his signature.

XVII. On the receipt of a Charge Sheet in Form A., the sub-District Police Officer must at once submit the same to the Magistrate having jurisdiction, and any changes or alterations that are necessary must be made by the Magistrate and not by the Sub-District Officer.

XVIII. But on the receipt of a Final Report of a case in B., or C. Form, the Sub-district Police Officer may, if he thinks the investigating Officer has acted hastily or improperly, return the form and direct a re-investigation, or depute another Officer to make a fresh enquiry.

FINAL REPORT OF CASES IN WHICH NO ONE IS CHARGED—*Form C.*

1. In Form C., the final report will be submitted of all cases reported to the Police which are cognizable, and in which no particular person is charged by the complainant with having committed the offence, or the Police fail, after enquiry, to discover the perpetrators.

2. It must be clearly understood that this (as well as Forms A. and B.,) is the *final* report of the case, so that it is only when the investigation has been completed, and no one has been up to that time charged with the crime, that this Form will have to be submitted.

3. On first reporting a case, the complainant may say he suspects no one, and afterwards make a charge against some particular person: in such a case the final report will be in either A. or B. Form.

4. If no one is named by the complainant, but the Police, from information received by them, arrest any one, the final report will be in A. or B. Form, according to the circumstances of the case; but the fact of the Police merely suspecting any one must not be considered the same thing as a charge made by the complainant against that person.

5. The columns in this Form, with one exception, are exactly the same as in B. Form, and the instructions as to how they are to be filled in, apply equally to the one as to the other.

6. The exception is the column in B. Form, in which the names and addresses of accused persons are inserted; this column is altogether omitted in C. Form for obvious reasons.

7. Particular attention is drawn to the last two columns. In the last but one, the Police Officer who sends in the Form must clearly state whether *in his opinion* the crime was really committed, or whether the case is a false one.

8. If a non-cognizable crime is proved to have been committed, and not the cognizable offence, the Police Officer who makes the enquiry into the offence will say so clearly, and in as few words as possible, in column 8.

9. In the last column, a clear history of the case will be given. It is from this report that the Magistrate will generally form his opinion as to the action taken by the Police; when this portion of the report is properly written, there will be no necessity for the Magistrate to see the Special Diaries of the case.

10. If there is not sufficient room in this column, the report will be carried over to the back of the sheet, and, if necessary, continued on a separate piece of paper.

11. On the receipt from the Court Inspector, of the Memo. directed to be furnished in Chapter ——* of Part ———, the Magistrate's final order will be entered in the counterfoil of the book at the Police Station.

12. If, after sending in the final report of a case in B. or C. Forms, the Police obtain a clue to the parties who committed the offence, their having sent in the "final report" will not prevent their immediately proceeding to make a fresh enquiry; and if on the second enquiry the accused is sent up for trial, A. Form will have to be submitted; but *if no one is arrested*, no further report in either B. or C. Forms will have to be made.

13. A Magistrate directing an enquiry to be made by the Police under Section 133, Code of Criminal Procedure, regarding a case which is not cognizable by the Police, shall, in the first instance, send his order to the sub-District Officer, and not to the Officer in charge of the Police Station direct.

14. The sub-District Officer will forward, with his endorsement, the Magistrate's order to the Officer he wishes to make the enquiry; this Officer will then proceed in the same manner as he would with a cognizable case, except in the following two particulars:—

1st.—He shall not send in a first information report.

2nd.—He shall not arrest the accused without a warrant.

15. A report of the case under Sec 180, Code of Criminal Procedure, will be sent by the investigating Officer to the sub-District Police Officer, and he will forward it at once to the Magistrate who ordered the investigation.

16. The Magistrate's order to make an enquiry into a non-cognizable case, does not give the Police the power of arresting the accused for an offence for which the law says he shall not arrest without a warrant.

17. If, on the receipt of the report, the Magistrate should issue a warrant or summons against the accused, the Police Officer will report the case in A. Form, and send the same papers and forms, as he would in a cognizable case.

18. But if the Magistrate does not issue either a warrant or summons, the case will be reported in either B. or C. Forms, according as a charge is or is not made against any one by name.

19. The final report of every case investigated by the Police, whether cognizable or not, must be sent in one or other of the three final report forms, and the counterfoil, which should contain a precis of all the particulars noted in the sheet, should be filed among the Station Books.

20. Non-cognizable cases will not be entered in any of the books kept at Sub-District or District Head Quarters, and shall not be entered in any of the returns furnished by Sub-District Officers or District Superintendent.

* See Note to para. 47, of Chapter 2.

The first information of a cognizable crime reported at _____ *Police Station,* _____ *sub-District* _____ *District, under Section* 139 *of the Criminal Procedure Code.*

Date and hour of receipt at Police Station of first information.	Name of informant and parties concerned.	Crime reported, amount stolen, &c.	Date of occurrence of the crime.	Place of occurrence, direction and distance from Police Station.	Steps taken by Officer in charge of Station.

No.

In charge of _____ *Police Station.*

Date of Despatch.

COMPLAINANT OR INFORMANT'S STATEMENT.

BENGAL POLICE_____DISTRICT.

A Form

*Charge Sheet of a case reported at*_____*Police Station*
*dated the*_____*of*_____186 .

No. of Charge

Date of Charge Sheet

No. of 1st information

Date of 1st information

Complainant

Witnesses

Crime established before Police

Name of Arresting Officer

List of property found

Weapons or instruments found

Persons charged

Persons forwarded under custody

Persons admitted to bail

Crime established before Magistrate

Result of trial

Signature of Officer taking the charge

No. of charge.	No. of first information.	Date and hour complained at Station and by whom.	Name and address of complainant or person charging.	Name and address of witnesses.	Charge established before the Police.	Date, hour, and by whom taken into custody.	Property found on person and elsewhere, and by whom.	Weapons or instruments found connected with the crime.	Accused Persons.			Signature of Police Officer taking the charges.	Crime established before Magistrate, and now disposed of on trial.	Remarks by Magistrate.
									Named by Complaint.	Sent up in custody.	Sent up on bail for trial.			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.

BENGAL POLICE_____DISTRICT.

No.

Date

No. of 1st information

How and by whom reported

Name of complainant or informant

Crime

Amount of property stolen

Accused not arrested

Accused, arrested and released

Crime true or not

Signature of investigating Police Officer

Magistrate's final orders

B Form.

Final Report of a case reported at_____Police Station, in which the charge against the accused was not sufficiently proved to warrant their being sent up for trial.

Date and No. of Final Report.	No. of first information of the Case.	How and by whom brought to Station.	Complainant or informant's name and address.	Charge or complaint.	Amount of Property ascertained to have been stolen.	Name and address of accused persons.		Signature of Officer who investigated the case.	Whether the crime after investigation was ascertained to have been committed or not.	Course adopted by the Police, and reasons for not sending the accused before the Magistrate for trial.
						Not arrested.	Arrested and released.			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.

BENGAL POLICE_____DISTRICT.

C Form.

Final Report of a case reported at_____Police Station in which no one was charged with the crime, and no clue obtained by the Police.

No.

Date

No. of 1st information

How and by whom reported

Name of complainant or informant

Crime

Amount of Property stolen

Crime true or not

Signature of investigating Police Officer

_____

Final order of the Magistrate.

Date and No.	No. of first information of the case.	How and by whom brought to Station.	Complainant or informant's name and address.	Charge or complaint.	Amount of Property ascertained to have been stolen.	Signature of Officer who investigated the Case.	Whether the crime after investigation was ascertained to have been committed or not.	Course adopted by the Police, reason of failure or grounds for believing the charge a false one.
1.	2.	3.	4.	5.	6.	7.	8.	9.

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